

N6DD6GOE1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 UNITED STATES OF AMERICA,

5 v.
6 BRIJESH GOEL,

22 CR 396 (PKC)
Trial

7 Defendant.
8 -----x
9 Before:

10 HON. P. KEVIN CASTEL,
11 District Judge
12 - and a jury -
13 APPEARANCES

14 DAMIAN WILLIAMS,
15 United States Attorney for the
16 Southern District of New York
17 BY: JOSHUA NAFTALIS
18 SAM ROTHSCHILD
19 ANDREW M. THOMAS
20 Assistant United States Attorneys

21 FORD O'BRIEN LANDY LLP
22 Attorneys for Defendant
23 BY: ADAM C. FORD
24 ANJULA PRASAD
25 NICOLETTE BEUTHER

-and-

26 GIBSON, DUNN & CRUTCHER, LLP
27 Attorney for Defendant
28 BY: REED M. BRODSKY

29 Also Present:
30 Madeline Sonderby, Paralegal Specialist - USAO
31 Matthew Mahaffey, Special Agent - FBI

N6DD6GOE1

1 (Trial resumed; jury present)

2 THE COURT: Good morning, ladies and gentlemen. I
3 hope you had an easy trip home, and thank you for being here on
4 time so we can get a good start.

5 I told you as we left yesterday that I would have some
6 preliminary instructions for you. And that's what I want to do
7 now. You've heard from me now multiple times that my job is to
8 instruct you as to the law that governs or controls this case,
9 and you will get those instructions at the end of the case.

10 Now, I think it might be appropriate for me to review
11 what I did during jury selection, and I gave you an idea of
12 what the case was about. So let me turn to my binder and pull
13 that up one more time for you.

14 As I told you yesterday, an indictment is an
15 accusation. It's proof of nothing. It's the means by which a
16 criminal case is commenced. The defendant has denied the
17 charges made by the government and has pleaded not guilty to
18 the indictment.

19 Count One charges that Mr. Goel conspired or agreed
20 with another individual to violate the federal laws that make
21 it unlawful to commit securities fraud and tender offer fraud.
22 A conspiracy is an agreement between two or more people to
23 commit an unlawful act, and the law punishes that as a separate
24 crime from committing the unlawful act. The agreement to
25 commit it can be a separate crime.

N6DD6GOE1

1 Count Two, Three, and Four each charge that Mr. Goel
2 violated the federal securities laws that make it unlawful to
3 engage in securities trading based on material nonpublic
4 information.

5 Now, each of these Counts, Two, Three, and Four,
6 involve information and trading regarding a separate deal, a
7 separate stock, separate transaction. So that's why there are
8 three counts there. That's what the government is alleging.

9 Count Five charges that Mr. Goel violated a federal
10 law that makes it unlawful to commit securities fraud by
11 providing another individual with material nonpublic
12 information that the defendant obtained from his employer
13 Goldman Sachs so that the other individual could execute
14 securities transactions.

15 Count Six charges that Mr. Goel violated a federal law
16 that makes it unlawful to obstruct justice by deleting and
17 causing another individual to delete electronic communications
18 related to the insider trading scheme.

19 Mr. Goel has denied the charges and entered a plea of
20 not guilty. The law presumes him innocent of all charges until
21 such time, if ever, as the government proves each element of
22 the charge by proof beyond a reasonable doubt.

23 So the indictment is not evidence. The presumption of
24 innocence remains with the defendant throughout the trial
25 unless and until after hearing and considering all of the

N6DD6GOE1

1 evidence and my final instructions on the law, you as jurors
2 are unanimously convinced of his guilt beyond a reasonable
3 doubt.

4 Until it is time to deliberate at the conclusion of
5 the case, it's important that you keep an open mind. You must
6 pay close attention to all the evidence. Evidence consists
7 only of the testimony of witnesses, documents, and other things
8 admitted as evidence or stipulations agreed to by the
9 attorneys.

10 Certain things are not evidence and must not be
11 considered by you. I will list them for you now.

12 Statements, arguments, and questions by lawyers are
13 not evidence, nor are my own statements to you. They are not
14 evidence. I'm not a witness, the lawyers are not witnesses.
15 So what they said to you yesterday in openings is not evidence.
16 It's a preview of the evidence. What they say to you in
17 closings is not evidence. My instructions on the law are
18 instructions on the law, they are not evidence. They are
19 instructions.

20 Now, what do I mean when I say a question is not
21 evidence? It's the question together with the witness' answer
22 that makes it evidence. So let's say the witness is asked,
23 were you in the owner's box at Yankees Stadium on August 12,
24 2017, when Derek Jeter came in and said the following.

25 Derek Jeter, owner's box, 2017, what is this about,

N6DD6GOE1

1 what does this mean, et cetera. It's a question. If the
2 witness says no, there's no evidentiary value to the fact that
3 the question was asked. When I say no, if he denies it, that
4 has evidentiary value in itself. But you are to infer nothing
5 from the question that may have a factual statement in it
6 because that's just coming out of the lawyer's mouth. So you
7 listen to the question and the witness' answer and in
8 combination they become evidence.

9 Objections to questions are not evidence, lawyers have
10 an obligation to their clients to make an objection when they
11 believe evidence is being offered for an improper reason under
12 the rules of evidence. These are technical rules and not
13 things that you need to be concerned with. You should not be
14 influenced by the objection or the Court's ruling on it.

15 If the objection is sustained, then ignore the
16 question and any answer that may have been given before the
17 Court sustained the objection. If it's overruled, treat the
18 answer like any other.

19 If you're instructed that some item of evidence is
20 received for a limited purpose, you must follow that
21 instruction. Something else that is not evidence is testimony
22 that is stricken or excluded. It happens sometimes in a
23 trial -- it may not happen in this trial -- that an answer will
24 be given or testimony will be given, and then on further
25 reflection and application, the Court may decide to strike that

N6DD6GOE1

1 testimony. You then have to put it out of your mind and I'll
2 give you an instruction on that if that should happen this in
3 this trial.

4 Something else that is not evidence is anything you
5 may have seen or heard outside the courtroom. You are to
6 decide the case solely on the evidence presented here. If you
7 or your family members were involved in a trial, you would want
8 jurors who followed that instruction.

9 So I have a few rules that I'm going to give you to
10 guide you and to keep this case on a fair track.

11 First, do not discuss the case among yourselves or
12 with any other person. You'll have the opportunity to do so at
13 the end of the case when all the evidence is in and you've
14 heard my instructions. And as I told you yesterday, that means
15 even going back in the jury room and sawing, wow, that was
16 interesting or, wow, that was boring, or what did you think of
17 that person, that's talking about the case. That's off limits.
18 Shut it down. It's not permissible. It's as simple as that.
19 Plenty of other things in life to talk about this time of year.

20 You're not to read anything in the newspapers or
21 elsewhere about the case, any reporting about the case through
22 any media source. You're not to conduct any research on the
23 case. That means you don't Google the lawyers or law firms,
24 the judge, the witnesses, terms that you are unfamiliar with.
25 Oftentimes, and you've probably experienced this, you see

N6DD6GOE1

1 something on the Internet, and if somebody had an opportunity
2 to address it or explain it, you would find out, well, it's not
3 true or it's misleading or it doesn't apply here. And you're
4 depriving one side or the other of the opportunity to do that,
5 where there may be a simple explanation by going off on your
6 own and doing research.

7 Now, it's a violation of your oath as a juror and a
8 violation of the Court's order to seek out your own information
9 about any matter touching upon the trial. Your consideration
10 of this case must be on what you observe.

11 Another rule is do not send or receive any electronic
12 communications about the case. This includes texting,
13 e-mailing, blogging, posting on social media platforms or using
14 other electronic communications to discuss or even mention the
15 case.

16 For example, you may not even post that you're a juror
17 in this case. This also means no communication with fellow
18 jurors about the case or any lawyer or any witness or any other
19 human being.

20 Now, sometimes in the course of the trial, there may
21 be a circumstance that occurs that requires you to inform the
22 Court of something, maybe you saw or heard something, and
23 you're not sure what to do about it. Send me a note.

24 If you're in the jury room and you see a fellow juror
25 writing a note, they are doing the right thing by not

N6DD6GOE1

1 discussing it with everybody else. They're not trying to keep
2 secrets. That's because if, whatever the circumstances are,
3 requires that juror to withdraw from the case, it will not
4 otherwise pollute or infect other members of the jury. So the
5 juror is doing the right thing in writing a note and not
6 discussing it and giving it to my deputy to give to me.

7 You're not allowed to speak to anyone about the case.
8 If you're approached by anyone, politely tell them the judge
9 has directed you not to do so. If any person seeks to contact
10 you about the case, you're required to report the incident to
11 me promptly and I don't expect that will happen in this case.

12 Also, if someone you know comes into the courtroom,
13 send me a note. This is a public courtroom. It may be that
14 you're meeting someone for lunch. There's nothing wrong with
15 that. But it's important that you not hear anything that goes
16 on in the courtroom while all the jurors are not present. It
17 becomes necessary for a judge to talk to the parties about
18 issues in the case and these are not issues that are submitted
19 for your consideration as part of the case.

20 The attorneys, the defendant, the witnesses are not
21 permitted to talk to the jury outside the courtroom, not even
22 to offer a friendly greeting. So if you happen to see them
23 outside the courtroom, they will not and should not speak to
24 you. Please take no offense at it. They're going to treat you
25 like a perfect stranger and you should treat them like a

N6DD6GOE1

1 perfect stranger. In doing so they will be following and you
2 will be following my instructions.

3 Now, in deciding the facts of the case you'll have to
4 decide the credibility of the witnesses. How truthful and
5 believable they are. Now, how do you decide what to believe
6 and what not to believe? Well, you're going to listen to the
7 witnesses. Watch them and observe them and then decide as you
8 would decide questions in your ordinary life.

9 Did they know what they were talking about? Were they
10 candid, honest, open and truthful? Did they have a reason to
11 falsify, exaggerate or distort their testimony.

12 Sometimes it's not what a witness says, but how he or
13 she says it that may give you a clue as to whether or not to
14 accept that witness' versions of an incident or an event, as
15 credible or believable. In short, the way a witness testifies
16 may play an important part in your reaching a judgment as to
17 whether or not you can accept the witness' testimony as
18 reliable.

19 You will use your common sense and good judgment to
20 evaluate their testimony based on all of the circumstances. I
21 cannot emphasize too strongly that you must keep an open mind
22 until the trial is over. A case can be presented only step by
23 step. Witness by witness. And it would be unfair to one side
24 or the other if you made up your mind before you heard all of
25 the evidence. We know from experience that frequently we'll

N6DD6GOE1

1 hear a person give his version of an event which sounds
2 impressive, even compelling and then you hear another person's
3 version of the same event or maybe even a later version told by
4 that first person and what was so compelling at first has been
5 weakened or dissipated.

6 Now, there's no legal requirement that law enforcement
7 agents investigate crimes in a particular way, or that the
8 government prove its case through any particular means. While
9 you are to carefully consider the law enforcement evidence
10 introduced by the government, you are not to speculate as to
11 why they used the techniques they did or why they didn't use
12 other techniques. The government is not on trial, law
13 enforcement techniques are not your concern. Your concern is
14 to determine whether on the evidence or the lack of evidence,
15 the defendant's guilt has been proven by the government by
16 proof beyond a reasonable doubt.

17 Finally, let me say a few words about the trial
18 procedure. Now that openings are concluded, witnesses will be
19 called. There is a direct examination and if it's a
20 government -- if the government calls a witness, the defendant
21 need not cross-examine that witness. The defendant has no
22 burden to do anything in a criminal trial. But the defendant's
23 counsel may choose to cross-examine a witness. And then the
24 party who called the witness has the opportunity to conduct a
25 redirect examination. There are no further examinations beyond

N6DD6GOE1

Gorman - Direct

1 the redirect examination except in extraordinary circumstances,
2 the Court may allow it.

3 So as I said, at the end of the case, I will give you
4 detailed instructions on the law, I'm going speak them and I'll
5 also give you a typed set of the instructions which you'll have
6 in the jury room at the end of the case.

7 With that, I turn to the government and invite it to
8 call its first witness.

9 MR. NAFTALIS: Thank you, your Honor. The government
10 calls Wendy Gorman.

11 WENDY GORMAN,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 THE COURT: All right. Mr. Naftalis, you may examine.

15 MR. NAFTALIS: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. NAFTALIS:

18 Q. Good morning, Ms. Gorman. Can you tell the jury where you
19 went to school?

20 A. Sure. I did my undergraduate at NYU, and I did my graduate
21 degree at George Washington University.

22 Q. And since you finished your graduate degree, what graduate
23 degree do you have?

24 A. I have a master's in business administration.

25 Q. Since you received that degree, what have you generally

N6DD6GOE1

Gorman - Direct

1 done for work?

2 A. I have been in credit risk for the entirety of my career.

3 Q. Let's break that down. When you say "credit," can you
4 explain to the jury what credit is?

5 A. Sure. So credit, you extend credit. So effectively you're
6 making a loan. And so credit risk is making sure that you get
7 repaid.

8 Q. And what types of companies have you worked at?

9 A. Banks.

10 Q. Why, if at all, is credit risk important to a bank?

11 A. Sure. So we make a lot of loans and in our case we make
12 hundreds of billions of loans. If you don't get repaid, the
13 company wouldn't be solvent and could not exist if you make a
14 bunch of bad loans.

15 Q. Where do you currently work?

16 A. I work at Goldman Sachs.

17 Q. What is Goldman Sachs?

18 A. We're a global financial institution. We do banking
19 services and advisory.

20 Q. Is one of the services that Goldman provides investment
21 banking?

22 A. Yes.

23 Q. Can you explain to the jury what investment banking is?

24 A. So investment banking normally does two services. You do
25 advice for mergers and acquisitions, so for a company that

N6DD6GOE1

Gorman - Direct

1 wants to buy themselves or sell themselves. And then the other
2 thing we primarily do is offer to raise capital. That can be
3 debt like a loan, or a bond or it could be equity like you're
4 going to raise stock, public or private.

5 Q. And when you say advise, they're representing the company?

6 A. Correct.

7 Q. Where is Goldman's headquarters?

8 A. We're in Manhattan, downtown.

9 Q. What's your current title at Goldman Sachs?

10 A. I'm a partner and head of credit.

11 Q. Head of credit.

12 So let's start with your -- are you the chief credit
13 officer?

14 A. Yes.

15 Q. Can you tell the jury what that means you do?

16 A. Sure. So we talked about credit risk. So my team is
17 responsible for making sure we make good loans and that we
18 manage and monitor their portfolio until we get repaid.

19 Q. Do you sit on any committees at Goldman Sachs?

20 A. I do.

21 Q. Which ones?

22 A. I am cochair of a firm-wide capital committee. I'm on our
23 firm-wide risk governance committee. I'm on our allowance for
24 loans and losses committee. I'm on our credit investment
25 committee. There might be one or two others.

N6DD6GOE1

Gorman - Direct

1 Q. Let's talk about the firm-wide capital committee.

2 Can you explain to the jury what that committee is?

3 A. Sure. That committee is responsible for arranging debt
4 financing, so loans, bonds. Whether we underwrite it or if we
5 do it, it's called best efforts. So we just help arrange it.

6 Q. So when you say arranging debt financing, debt financing is
7 what?

8 A. So debt financing can be a loan, it can be a bond, it's
9 used to raise -- if you want to build a plant, it could be to
10 buy another company, it could be to do a dividend. They're
11 looking to raise money and we provide a commitment for them to
12 do so.

13 Q. When you say "they," do you mean companies that are looking
14 to raise money?

15 A. Yes.

16 Q. Do you have any particular role on this firm-wide capital
17 committee right now?

18 A. Yes, I'm cochair currently.

19 Q. And when did you join the committee itself?

20 A. I joined in 2017 as a member.

21 Q. Can you explain to the jury who sits on the committee?

22 A. Sure. So it's our firm-wide capital committee, so it tends
23 to be the most senior. So it's myself as cochair and then I'm
24 with the cohead of global financing and then we also have
25 representatives managing directors from legal, controllers,

N6DD6GOE1

Gorman - Direct

1 compliance, other members of the business and other members of
2 credit.

3 Q. Are any people who are not employed by Goldman Sachs
4 members of this committee?

5 A. No.

6 Q. You referred to this a little bit at the beginning of your
7 testimony. In very rough numbers approximately how many loans
8 does this committee consider a year?

9 A. So the committee, if I'm including -- we have called child
10 committees, three underneath, which we're responsible for and
11 get posted on what goes, all in we do more than 2,000 loans a
12 year.

13 Q. Again, in rough numbers, what are the typical sizes of
14 these loans to companies?

15 A. Sure. As it goes from firm wide it's hundreds of millions
16 of dollars, could be in multiple billions as well.

17 Q. Per loan?

18 A. Correct.

19 Q. How would you describe the committee's importance at
20 Goldman Sachs?

21 A. It's very important. It -- we are responsible for the
22 capital of the firm.

23 Q. When you say the "capital of the firm," what do you mean?

24 A. So if I say the credit, so we're extending the credit as I
25 said before. So if our job is to make sure those are safe and

N6DD6GOE1

Gorman - Direct

1 sound loans, our job is holistically to make sure that we're
2 protecting our client's information, and that as we extend
3 those, we're protecting our clients and the firm.

4 Q. And when you say protecting Goldman Sachs, what do you mean
5 by protecting Goldman Sachs?

6 A. Making good loans.

7 Q. What happens if Goldman makes bad loans?

8 A. The firm would go out of business.

9 Q. You said that you're also a partner at Goldman Sachs?

10 A. I am.

11 Q. What does that mean?

12 A. So at Goldman it's the highest title you can receive at the
13 firm.

14 Q. When did you become a partner?

15 A. 2020.

16 Q. When did you first join Goldman Sachs?

17 A. 2017.

18 Q. And what was your role when you first joined the firm?

19 A. I was a managing director and I was responsible for
20 investment banking and credit risk.

21 Q. So same general responsibilities but just for the
22 investment bank?

23 A. Correct.

24 Q. And now it's for the entire company?

25 A. Correct.

N6DD6GOE1

Gorman - Direct

1 Q. When did you become the chief credit officer?

2 A. Two years ago.

3 Q. We're not going to go through the rest of your biography,
4 but have you worked at other banks before joining
5 Goldman Sachs?

6 A. I worked at two others.

7 Q. Ms. Gorman, during your career, have you become familiar
8 with mergers and acquisitions transactions?

9 A. Yes.

10 Q. Is that sometimes called M&A?

11 A. Yeah.

12 Q. Yes?

13 A. Yes.

14 Q. Can you tell the jury what M&A is?

15 A. Sure. So M&A is mergers and acquisition, you provide
16 advice. So if a company wants to buy another company, either
17 the buy side, the company that wants to buy it, or the sell
18 side, the one that's being sold, they're looking for advice.
19 And that would include what price to pay, how to negotiate, how
20 to approach them, how to negotiate the document, when to do it.
21 And so it's all that, and that's M&A advice.

22 Q. And when Goldman is providing M&A advice, what is its
23 position typically called?

24 A. An M&A adviser. You can be a buy side or a sell side.

25 Q. Buy side, you referenced -- when a company is buying a

N6DD6GOE1

Gorman - Direct

1 company, is that called the acquirer?

2 A. Correct.

3 Q. What is buy side?

4 A. What is buy side?

5 Q. Yes.

6 A. So they're buying the company, so it's the acquirer, you're
7 representing the acquirer who wants to buy the company.

8 Q. And when -- the company that's being purchased, what is
9 that company sometimes referred to as?

10 A. Simply called a target. So the target of the acquisition.

11 And so whoever is advising them would be sell side.

12 THE COURT: Just repeat what you just said, please.

13 The last words.

14 THE WITNESS: Sure, so if the target company, if they
15 seek advice, that's typically the M&A adviser is called the
16 sell side because they're selling the company.

17 THE COURT: Thank you.

18 BY MR. NAFTALIS:

19 Q. And you've referenced this a little. What types of clients
20 does Goldman typically represent in M&A deals?

21 A. We can represent a company, we can represent private
22 equity, we can represent a family office, represent an
23 individual. But typically, its companies are private equity.

24 Q. Are the companies sometimes publicly traded?

25 A. Yes.

N6DD6GOE1

Gorman - Direct

1 Q. What is a publicly traded company?

2 A. It's where they trade on a public stock exchange, like the
3 Google on the New York Stock Exchange, or they may be on the
4 NASDAQ.

5 THE COURT: You have to keep your voice up at the end
6 of the sentence. We have to get this all down and hear it.
7 The last three words I didn't hear.

8 THE WITNESS: Okay. I will do better.

9 THE COURT: Thank you. That's all right.

10 THE WITNESS: So a public company is a company that
11 is -- has public stock. So I was using an example it can be
12 like Google is on, I think it's on the New York Stock Exchange
13 or NASDAQ, but that's a public company.

14 THE COURT: Thank you.

15 THE WITNESS: Mm-hmm.

16 BY MR. NAFTALIS:

17 Q. And you referenced the term "private equity"?

18 A. Correct.

19 Q. What is a private equity firm or private equity company?

20 A. It can also be called a financial sponsor. It tends to be
21 a private entity that has investors that are involved like an
22 investment fund.

23 Q. Let's talk about the basic steps of M&A. I don't want to
24 go through all the details, but can you walk the jury through,
25 from Goldman's perspective, how an M&A deal could go. Just

N6DD6GOE1

Gorman - Direct

1 step by step?

2 A. So, in essence, a company decides they want to buy a
3 company or it could be an M&A adviser goes to them and says we
4 think this would be a good idea. You get hired by them, you
5 would talk to them about what are they looking to do, talk
6 about what purchase price makes sense. You would talk about
7 how to approach the company, you talk about when to do it to --
8 you know, you're cognizant of earnings dates and how they're
9 going to be performing.

10 You would then make an offer. That can be early on
11 and just say are you interested in being acquired. It could be
12 as much as sending a letter to the board saying we're willing
13 to acquire you. And then the M&A adviser would help negotiate
14 because this all ends up with a merger agreement that would be
15 signed with the two companies.

16 THE COURT: And when you refer to M&A, you are
17 referring to mergers and acquisitions.

18 THE WITNESS: Yes, correct.

19 BY MR. NAFTALIS:

20 Q. Now, you said a merger agreement. What is a merger
21 agreement?

22 A. A merger agreement, as you do all these negotiations, is at
23 the end. So the two parties both sign an agreement. So it's
24 like if you're going to sell your house. The mortgage
25 agreement at the end you agree to sell your house to this

N6DD6GOE1

Gorman - Direct

1 person. You sign a document and it's a binding document that
2 you're selling and buying.

3 Q. And in connection with a merger agreement, does Goldman
4 sometime provide financial commitments to a company?

5 A. We do.

6 Q. Explain how that works.

7 A. So alongside this, if you're going to buy a company,
8 they're going to say, well, how are you going to pay for the
9 company if you're going to buy it, and it could be debt or
10 stock. And so if it's going to be on debt commitments, you
11 provide a commitment that goes alongside it.

12 Q. Is a debt commitment a commitment to give a loan to one
13 company?

14 A. Yes.

15 Q. Kind of like a mortgage?

16 A. Correct.

17 Q. After those documents are signed what, if any,
18 announcements are made?

19 A. So typically the next day you're making a public
20 announcement.

21 Q. And how, if at all, is that public announcement typically
22 made?

23 A. So there typically is a press release as well as they are
24 required to file with the Securities and Exchange Commitment,
25 what's called an 8-K. So when something material is happening

N6DD6GOE1

Gorman - Direct

1 and they'll announce the acquisition, how much they're paying
2 for it and they'll typically attach the press release with it.

3 Q. Is the 8-K just the name of the firm that the SEC uses?

4 A. Yes.

5 Q. Now, let me just ask you some questions and these are all
6 based on your experience working at Goldman Sachs and at other
7 investment banks.

8 Before the public announcement of an M&A transaction,
9 is the fact the two companies are talking to each other
10 considering a transaction public or nonpublic information?

11 A. It is nonpublic information.

12 Q. Before the public announcement of an M&A transaction, are
13 the potential terms that the parties are considering, such as
14 the price, is that public or nonpublic information?

15 A. Nonpublic.

16 Q. Before the public announcement of an M&A transaction, is
17 the potential signing of the merger agreement public or
18 nonpublic information?

19 A. Nonpublic.

20 Q. Can you explain to the jury why those different types of
21 information are nonpublic?

22 A. Sure. So if we think about the information that would be
23 in there, who you're buying, the price that you could be
24 buying, when you would announce it, it's termed material
25 nonpublic information. And effectively, it's information that

N6DD6GOE1

Gorman - Direct

1 other people shouldn't have and could act on. I use the
2 example of it's like someone gives you the answer key to a test
3 for the next day. And what's in all that information is
4 essentially the answer key.

5 Q. Ms. Gorman, in your experience after a transaction is
6 publicly announced, what generally happens to the share price
7 of the target company, the company that's getting acquired?

8 A. Sure. It would go up to what the offer price is.

9 Q. And can you explain why that typically happens?

10 A. Let's say your stock is at \$10 a share, I'm going to buy
11 you at \$15 a share. If I announce that, the stock is going to
12 rise to what you're being purchased as because someone is
13 willing to buy that price because you know you're going to get
14 that amount of money.

15 Q. Now let's go back to this firm-wide capital committee. I'm
16 just going to call it "the committee" to make it easier, is
17 that okay?

18 You testified earlier that this committee does what?

19 A. So we approve debt commitments.

20 Q. Including when Goldman is lending company to one company in
21 an M&A deal?

22 A. Correct.

23 Q. What, if any, documents are provided to the committee when
24 it's considering whether to approve one of these debt
25 commitments?

N6DD6GOE1

Gorman - Direct

1 A. Sure. So we get a memo normally 24 to 48 hours before and
2 the memo is the approval document that we read to make our
3 decisions.

4 Q. Who typically drafts this memo?

5 A. What's called the deal team, so the team that's working,
6 the investment banking team that's working on the transaction.

7 Q. We're going to look at some of these memos, but before we
8 do, can you tell the jury what types of information are
9 generally in them?

10 A. Sure. So it starts off with the deal team, like who's on
11 it and who is responsible for it. And then it talks about what
12 the transaction is, so who's buying, who's selling, what the
13 purchase price would be, when we think it would be announced.

14 It gives projections, so financial information of how
15 they think it would perform over time. Essentially, the whole
16 point of it, how if we're going to -- we might hold the
17 commitment or we might try to sell it and how you would
18 distribute that commitment. How we think the stock will
19 perform. It's essentially to help us make what I call a good
20 loan, a safe and sound loan.

21 Q. Is this type of information that's in these memos public or
22 private at the time the memos are sent to the committee?

23 A. Private.

24 Q. Does Goldman Sachs restrict access to these memos within
25 the firm itself?

N6DD6GOE1

Gorman - Direct

1 A. Yes.

2 Q. Why?

3 A. Because it has material nonpublic information.

4 Q. In general, when during the deal negotiation process is
5 approval typically sought for a loan in an M&A deal?6 A. So if you're going to do a commitment for it, it's
7 typically anywhere between a couple days or two weeks before
8 where they'll finalize a financing commitment.

9 Q. Couple days or couple of weeks before what?

10 A. Sorry, the merger agreement is signed and it's publicly
11 announced.

12 Q. Fair to say it's one of the last steps of the deal?

13 A. It is.

14 MR. NAFTALIS: Your Honor, at this time I'd like to
15 read a stipulation between the parties.16 THE COURT: Is it a stipulation of fact or of
17 testimony? Or both?

18 MR. NAFTALIS: This one is testimony.

19 THE COURT: Pardon me?

20 MR. NAFTALIS: Testimony.

21 THE COURT: Okay. Ladies and gentlemen, a stipulation
22 is an agreement between the parties to the case. A stipulation
23 as to testimony is a stipulation that if called, a witness
24 would testify to a certain set of facts or circumstances. You
25 must accept that if called, such a witness would testify in

N6DD6GOE1

Gorman - Direct

1 that manner. The weight, if any to give -- to give to that
2 testimony, however, is entirely for you, the jury to decide.

3 Now, Mr. Naftalis, I'm going to give you the
4 opportunity to read the preamble to the stipulation, but going
5 forward for both sides, you'll get right to the heart of the
6 agreement. But for the first time, the jury can hear the
7 preamble.

8 MR. NAFTALIS: Yes, your Honor.

9 THE COURT: Which is, I don't know want to say it's
10 just lawyer talk, but you might decide that's just what it is.

11 Go ahead.

12 MR. NAFTALIS: It's a lot of mention of lawyers in
13 this one.

14 The preamble says: It is hereby stipulated and agreed
15 by and among the United States of America, by Damian Williams,
16 United States Attorney for the Southern District of New York,
17 Joshua N. Naftalis, Samuel P. Rothschild, and Andrew Thomas,
18 Assistant United States Attorneys, of counsel, and
19 Brijesh Goel, the defendant, with the consent of his attorneys,
20 Reed Brodsky, Adam C. Ford, and Anjula Prasad, that:

21 Number 1, if called as a witness, an employee of the
22 Goldman Sachs Group, Inc., referred to as Goldman Sachs, would
23 testify as follows:

24 A. The records reflected in Government Exhibits 100
25 through 141 and 143 were retrieved from Goldman Sachs' files or

N6DD6GOE1

Gorman - Direct

1 created by a person with knowledge of or created from
2 information transmitted by a person with knowledge of the
3 information shown, were created at or near the time the
4 information became available to Goldman Sachs and were created
5 and maintained by Goldman Sachs as part of its regularly
6 conducted business activities;

7 B. Between April 24, 2017, and June 20, 2018,
8 Brijesh Goel was a member of the Goldman Sachs e-mail
9 distribution list for Goldman Sachs' firm-wide capital
10 committee, the address being
11 GS-FWCC-distribution@internal.e-mail.GS.com, which included
12 only Goldman Sachs employees;

13 C. On February 12 and 13, 2017, Brijesh Goel was a
14 member of the Goldman Sachs e-mail distribution list for
15 Goldman Sachs' credit markets capital committee with the
16 address FW-CMCC-distribution@internal.e-mail.GS.com, which
17 included only Goldman Sachs employees;

18 And D. As a member of Goldman Sachs' firm-wide
19 capital committee and credit market capital committee internal
20 e-mail list, Goel received the e-mails reflected in Government
21 Exhibits 103 through 141.

22 2. It is further stipulated and agreed that this
23 stipulation and government exhibits 100 through 141 and 143 may
24 be received in evidence as government exhibits at trial.

25 THE COURT: And you're offering them now?

N6DD6GOE1

Gorman - Direct

1 MR. NAFTALIS: Yes, your Honor. We offer Government
2 Exhibit 500, which is the stipulation, and we offer
3 Exhibits 100 through 141 and 143.

4 THE COURT: Any objection?

5 MR. FORD: No objection.

6 THE COURT: Received.

7 (Government's Exhibits 500, 100 through 141, 143
8 received in evidence)

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe2

Gorman - Direct

1 BY MR. NAFTALIS: (Continued)

2 Q. Can we please bring up Government Exhibit 116 in evidence.

3 Ms. Gorman, in front of you there's a binder with
4 these exhibits in case that's easier for you to go through.

5 We are going to get to the specifics in a second.
6 Just to orient the jury, can you tell them what type of a
7 document we're looking at here?

8 A. Sure. So this is what's referred to as like a top sheet.
9 It tells you what the memo is going to be about.

10 Q. Is this an email?

11 A. Yes.

12 Q. And what is attached to this email?

13 A. The memo I referred to earlier.

14 Q. So let's walk through the top of the email. Who is this
15 email sent to?

16 A. It's sent to the GS Firmwide Capital Committee FWCC -
17 distribution.

18 Q. In September of 2017, were you on the committee at the
19 time?

20 A. I was.

21 Q. And you received this email?

22 A. I did.

23 Q. To your recollection, in September of 2017, what types of
24 people were on this email list?

25 A. So it would have been the members of the committee, and

N6DQgoe2

Gorman - Direct

1 then it would also include other people who were felt to know
2 on a need-to-know basis were on there.

3 MR. NAFTALIS: Your Honor, for reference, Government
4 Exhibit 500 reflects that Government Exhibit 116 was received
5 by Mr. Goel in the stipulation.

6 Q. What is the date of this email?

7 A. September 1, 2017.

8 Q. It's at 9:26 a.m.?

9 A. Correct.

10 Q. What is the first line of the email?

11 A. For Internal Use Only - Do Not Forward Externally.

12 Q. That's what's in red bold and caps?

13 A. Correct.

14 Q. What do you understand this to mean?

15 A. It's telling you that this information has to remain
16 internal because, I mean, from what our training is, it has
17 material nonpublic information.

18 Q. In your experience, do these top sheet emails have a
19 similar format?

20 A. Yes, they all do.

21 Q. Do they all include this warning at the top?

22 A. Yes, they do.

23 Q. Let's walk through the rest of the email.

24 It says the committee is the Firmwide Capital
25 Committee, right?

N6DQgoe2

Gorman - Direct

1 A. Correct.

2 Q. It then says committee date, and it says September 6, 2017.

3 What does committee date mean?

4 A. That's the date the committee would have met to discuss a
5 transaction.

6 Q. To approve whatever's being asked for?

7 A. Correct.

8 Q. And the memo -- excuse me -- the email is dated
9 September 1, right?

10 A. Correct.

11 Q. So the committee is meeting a few days later?

12 A. Yes.

13 Q. There is then a section called Management Committee Summary
14 paragraph?

15 A. Mmm-hmm.

16 Q. Generally, what's in this paragraph?

17 A. So this describes what the commitment is going to be, and
18 that we're providing finance commitment, like to who, to buy
19 what.

20 Q. It's like a summary what's in the memo behind it?

21 A. Yes.

22 Q. Can you read the first line in this paragraph?

23 A. Sure. "This transaction has not been publicly announced."

24 Q. When the memos say a transaction has not been publicly
25 announced, what does that mean?

N6DQgoe2

Gorman - Direct

1 A. It means it has -- there's been no 8K. It's not been
2 leaked to the press. It's confidential.

3 THE COURT: No form 8K has been filed with the SEC.
4 Is that what you mean?

5 THE WITNESS: Correct.

6 THE COURT: Thank you.

7 Q. So the deal is secret at this point?

8 A. Yes.

9 Q. It then says, "Goldman Sachs to provide financing
10 commitments for \$1.3 billion bridge loan to support Kuraray
11 Company Limited's tender offer to acquire Calgon Carbon
12 Corporation," right?

13 A. Mmm-hmm.

14 THE COURT: You have to answer in words.

15 A. Yes.

16 Q. Let's go through the sentence just so the jury follows
17 along. It says -- first, what kind of company was Kuraray?

18 A. They were a chemical company.

19 Q. What kind of company was Calgon Carbon?

20 A. A different type of chemical company.

21 Q. Afterwards, it says in parentheses CCC. Do you see that?

22 A. Yes.

23 Q. Was Calgon Carbon a publicly traded company at the time, do
24 you recall?

25 A. Yes.

N6DQgoe2

Gorman - Direct

1 Q. And CCC is what?

2 A. What's referred to as their ticker, their stock ticker.

3 Q. It says Goldman to provide financing commitments for a
4 \$1.3 billion bridge loan.

5 The sentence says Goldman Sachs to provide financing
6 commitments for a \$1.3 billion bridge loan. What does that
7 mean Goldman was being asked to do here?

8 A. So Goldman was providing a loan of \$1.3 billion to Kuraray.

9 Q. And it says, to support Kuraray's tender offer to acquire
10 Calgon Carbon. In very basic terms, what is a tender offer?

11 A. A tender offer is a public announcement of what you're
12 willing -- the price you're willing to offer to buy the shares
13 and a period of time when you're willing to offer them.

14 Q. Is it a way that one company can buy another, effectively?

15 A. Yes.

16 Q. Let's go back to the full email. If we could zoom out
17 entirely.

18 What's written at the very bottom of this page, the
19 last line on the email?

20 A. Not for Distribution Outside Goldman Sachs.

21 Q. Let's go to the next page of this exhibit.

22 This is the attachment. Is that correct, Ms. Gorman?

23 A. Yes.

24 Q. What's the title of the document?

25 A. Confidential Capital Committee memo.

N6DQgoe2

Gorman - Direct

1 Q. Before we go through the memo, what is written in red caps
2 and bold at the top?

3 A. Sure. It's For Internal Use Only - Do Not Forward
4 Externally.

5 Q. If you could just flip through the memo, how many pages is
6 this memo?

7 A. 28.

8 Q. What, if anything, is written at the top of every page?

9 A. Every page would say For Internal Use Only - Do Not Forward
10 Externally.

11 Q. Let's go back to the first page of the email -- the first
12 page of the attachment, excuse me. Let's look at the bottom of
13 the email. Where it says, "Please be aware." Zoom in on that.

14 It says in italics and bold, "Please be aware that, to
15 the extent this memorandum contains material nonpublic
16 information, the use of this information is restricted by law
17 (including, but not limited to, provisions of the U.S.
18 securities laws) and the firm's policies. Inappropriate use or
19 disclosure of this information could have serious consequences
20 for you and the firm, including potential criminal liability."

21 What's your understanding of what this sentence means?

22 A. It's made very clear that if you use material nonpublic
23 information, you're violating the firm's policies as well as
24 breaking the law.

25 Q. Now, we talked about how the top sheet email has a

N6DQgoe2

Gorman - Direct

1 consistent format. In your experience, do the memos sent to
2 the committee also have a consistent format?

3 A. Yes, they do.

4 Q. Do they each include the bold red warning at the top of
5 every page?

6 A. Yes.

7 Q. Do they each include this black italicized warning?

8 A. Yes, they do.

9 Q. We are not going to go through the entire memo, but what
10 types of information are generally in these memos?

11 A. So it would have what the purpose of the loan is. So it
12 would have who -- if it was a merger and acquisition
13 transaction, it would have who the purchaser, who the target
14 is, the price they would buy it, the debt they needed,
15 projections, when they think the announcement would be made,
16 and a timetable on there as well.

17 Q. The parties?

18 A. Yes.

19 Q. The terms of the deal?

20 A. Yes.

21 Q. The timing of the deal?

22 A. Yes.

23 Q. And analysis?

24 A. Yes.

25 Q. Let's go to the fifth page of this exhibit, which is the

N6DQgoe2

Gorman - Direct

1 fourth page of the memo. This is the executive summary
2 section?

3 A. Yes.

4 Q. In general, what is an executive summary?

5 A. So it is essentially giving you an overview of what's in
6 the memo.

7 Q. The first phrase of the second paragraph says what?

8 A. "Due to the sensitivity of confidentiality, Kuraray has
9 requested GS to provide a bridge commitment letter in
10 connection with the acquisition."

11 Q. Let's go down to process, which is right below that
12 paragraph. It says in the first sentence, "Kuraray and CCC" --
13 that's Calgon Carbon, right?

14 A. Yes.

15 Q. -- "have reached a nonbinding agreement on price and are
16 currently in the stage of confirmatory due diligence."

17 What is a nonbinding agreement on price?

18 A. It means the two parties have agreed on the price, but no
19 one has signed the final merger agreement because there's still
20 more work to do to make sure they feel comfortable with the
21 price.

22 Q. We'll skip confirmatory due diligence for now.

23 As of the date of this memo, which is September 1,
24 2017, was the fact that Kuraray had reached a nonbinding
25 agreement to buy Calgon Carbon public or nonpublic information?

N6DQgoe2

Gorman - Direct

1 A. Nonpublic.

2 Q. Now, in the next sentence it says, "Anticipated signing of
3 merger agreement is around September 21, 2017 at the earliest."

4 What does that mean?

5 A. So it means we expect them to sign the merger agreement and
6 then publicly announce on September 21, 2017.

7 Q. And that's about -- we saw the memo was dated the 1st?

8 A. Mmm-hmm.

9 THE COURT: Again --

10 A. Yes.

11 THE COURT: Thank you.

12 Q. That's about three weeks away?

13 A. Yes.

14 Q. As of the date of this memo September 1, 2017, was the fact
15 that a deal between Kuraray and Calgon Carbon could be
16 announced as early as September 21, 2017 public or nonpublic
17 information?

18 A. Nonpublic.

19 Q. Let's go to the 16th page of this Exhibit, which is page 15
20 of the actual memo. Let's look at the left side of the page
21 and zoom in on the assumption section.

22 In the fourth line, it says, "Acquisition price per
23 USD," and then it says, "\$21.50." What is USD?

24 A. U.S. dollar.

25 Q. What does this mean?

N6DQgoe2

Gorman - Direct

1 A. So this is the price that we expect them to offer for
2 Calgon Carbon.

3 Q. And it says -- when it says \$21.50 per share, that's per
4 share of what?

5 A. Of stock.

6 Q. As of September 1, 2017, the date of the memo, was the fact
7 that the agreed-upon sale price was \$21.50 a share public or
8 nonpublic information?

9 A. Nonpublic.

10 Q. Now, below the \$21.50 line, it says, "CCC's stock price as
11 of 8/21/17, \$12.50," then it says, "premium percentage
12 72 percent."

13 Can you explain what those lines mean?

14 A. Sure. What they're saying is on the date of August 21, the
15 stock was actually trading at \$12.50, and then the premium
16 refers to how much more the company is willing to pay, which in
17 this case was 72 percent more than \$12.50, or \$21.50.

18 Q. Now, Ms. Gorman, did there come a time when Kuraray and
19 Calgon formally agreed to a transaction?

20 A. Yes.

21 MR. NAFTALIS: Can we bring up for identification
22 Government Exhibit 334?

23 Your Honor, I've consulted with Mr Ford. We offer
24 Government Exhibit 334 in evidence.

25 THE COURT: No objection?

N6DQgoe2

Gorman - Direct

1 MR. FORD: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 334 received in evidence)

4 Q. Ms. Gorman, you see at the very top of this page it says a
5 8K?

6 A. Yes.

7 Q. Is that the document you were referring to earlier?

8 A. Yes.

9 Q. Let's go to -- this one says Calgon Carbon on the front.

10 Yes. Let's go to page 8 of this document.

11 So this is an attachment to the SEC filing?

12 A. Correct.

13 Q. What are we looking at here?

14 A. This is the public announcement about the transaction.

15 Q. Is this the press release?

16 A. Yes.

17 Q. What is the title of the press release?

18 A. Calgon Carbon Corporation Announces Agreement To Be
19 Acquired by Kuraray.

20 Q. And if you look below the bold, it says, "Pittsburgh,
21 Pennsylvania; Tokyo, Japan." What is the date of the press
22 release?

23 A. September 21, 2017.

24 Q. And right above that, it says, "Calgon Carbon stockholders
25 to receive cash of \$21.50 a share," right?

N6DQgoe2

Gorman - Direct

1 A. Yes.

2 Q. Those are the terms of the deal?

3 A. Yes.

4 Q. Can we bring up Government Exhibit 116 side by side with
5 this. Let's look at the first page.

6 The press release is a press release announcing a deal
7 between Calgon Carbon and Kuraray. Is that right?

8 A. Yes.

9 Q. And the internal memo was with regard to what companies?

10 A. Kuraray and Calgon Carbon.

11 Q. Let's go to page 5 of Government Exhibit 116. And zoom in
12 on the process section.

13 What date does the memo say that the merger agreement
14 was anticipated to be signed by?

15 A. September 21, 2017.

16 Q. What is the date on the press release again?

17 A. September 21, 2017.

18 Q. Let's go to page 16 of Government Exhibit 116.

19 Looking at the left side again, the acquisition price
20 set forth in the memo is what?

21 A. \$21.50.

22 Q. What does the press release say the actual acquisition
23 price was?

24 A. \$21.50.

25 Q. We can take that down, please. Can we bring up Government

1 N6DQgoe2

Gorman - Direct

1 Exhibit 108 in evidence?

2 Ms. Gorman, what are we looking at here?

3 A. This is an email with the top sheet describing the
4 transaction.

5 Q. Who was it sent to?

6 A. GS FWCC Distribution.

7 Q. Is that the committee, the Firmwide Capital Committee
8 internal email address?

9 A. Correct.

10 MR. NAFTALIS: Your Honor, pursuant to Government
11 Exhibit 500, the parties have stipulated that Mr. Goel received
12 this memo.

13 THE COURT: Is that correct?

14 MR. FORD: Yes, your Honor.

15 THE COURT: Thank you.

16 Q. Ms. Gorman, what's the date on this email?

17 A. April 24, 2017.

18 Q. Again, what's the first line of the email?

19 A. For Internal Use Only - Do Not Forward Externally.

20 Q. And in the management committee summary paragraph, what's
21 the first sentence again?

22 A. This transaction has not been publicly announced.

23 Q. Let's look at the memo itself. Let's go to page 5, please,
24 of the Exhibit, which is the fourth page of the memo. Let's
25 look at the top paragraph titled transaction.

N6DQgoe2

Gorman - Direct

1 The first sentence reads, "Thermo" -- that's an
2 abbreviation for what company?

3 A. Thermo Fisher Scientific.

4 Q. "Thermo has engaged Goldman Sachs as lead financial advisor
5 and lead financing bank for the potential acquisition of
6 Patheon, an NYSE-listed Netherlands, Inc. contract development
7 and manufacturing organization."

8 Let's step back. Look under value considerations.

9 What is the first sentence under value considerations? Can you
10 read that?

11 A. Sure. So "On March 24, Thermo submitted to Patheon a bid
12 with the range of \$33 to \$36 per share equating to an equity
13 valuation and total EV or enterprise value of \$4.8 billion to
14 \$5.3 billion and \$6.8 billion to \$7.3 billion, respectively."

15 Q. Let's look at the first part. It says March 24, that's
16 2017, right?

17 A. Yes.

18 Q. Thermo submitted to Patheon a bid with a range of \$33 to
19 \$36 per share?

20 A. Yes.

21 Q. Explain what that means happened in practice?

22 A. So what happened, they went to -- Thermo Fisher went to
23 Patheon and said are you willing to entertain a bid for us to
24 buy you for \$33 to \$36 a share.

25 Q. The next sentence says, "Initial feedback from the seller."

N6DQgoe2

Gorman - Direct

1 That's Patheon, right?

2 A. Yes.

3 Q. "Was that a final bid would need to be at the high end of
4 the range or higher in order to come to a final agreement."

5 So in terms of the deal negotiation process, what does
6 that mean? What's going on?

7 A. So the seller, or Patheon, has said we're willing to talk
8 to you about an acquisition, but it's not going to be \$33. It
9 needs to be closer to \$36 or higher.

10 Q. What's your understanding of whether this potential
11 transaction involving Thermo Fisher and Patheon was public or
12 nonpublic at the time?

13 A. It was nonpublic.

14 Q. And what about the potential terms of the deal? Was that
15 public or nonpublic at the time?

16 A. Nonpublic.

17 Q. Let's go to the 20th page of this Exhibit, which is page 19
18 of the memo. This section is called timetable. We haven't
19 looked at this type of a section yet, right?

20 A. Correct.

21 Q. When it says timetable, what does that mean?

22 A. So this is a timetable that we've made a loan. And we're
23 making a loan of \$8 billion, and the firm's intention is to
24 sell it down. And so it's a timetable of when we signed the
25 commitment letter and when the acquisition closes, and when we

N6DQgoe2

Gorman - Direct

1 get down to our final hold of how much debt we would want to
2 hold.

3 Q. When you say "sell down and final hold," what do you mean?

4 A. So sell down, we could sell to other banks who come into
5 this commitment, we could sell to bondholders or debt holders,
6 whatever the ultimate end financing that the company would be
7 looking to do.

8 Q. Let's look at the very first line in terms of where it says
9 Events, it says "Sign commitment letters" and then it says "8
10 May 2017." What does that mean?

11 A. So that means for Goldman and the company, we would sign a
12 commitment letter. There's a single sign where we sign, and
13 then the company would countersign which would make it a
14 binding agreement.

15 Q. In your experience, after a commitment letter is signed,
16 what, if any public, disclosures are typically made?

17 A. Typically very shortly thereafter a deal.

18 Q. A deal?

19 A. Correct.

20 Q. And this memo was dated April 24 of 2017. Is that right?

21 A. Yes.

22 MR. NAFTALIS: Your Honor, we are going to offer
23 without objection, I believe, Government Exhibit 332.

24 THE COURT: Any objection?

25 MR. FORD: No objection, your Honor.

N6DQgoe2

Gorman - Direct

1 THE COURT: Received.

2 (Government's Exhibit 332 received in evidence)

3 Q. What type of document are we looking at here, Ms. Gorman?

4 A. This is a form 8K.

5 Q. It says Thermo Fisher Scientific on the cover?

6 A. Correct.

7 Q. Let's look at page 7, please.

8 What's the attachment that we're looking at here?

9 A. This is a press release announcing the transaction.

10 Q. Let's just go through it.

11 What's the title of it? It says kind of below the
12 contact information, what's the title?

13 A. Sure. "Thermo Fisher Scientific to acquire Patheon, a
14 leading contract development and manufacturing organization."

15 Q. And below the bullets, it says, "Waltham, Mass and Durham,
16 North Carolina." And then what's the date of the press
17 release?

18 A. May 15, 2017.

19 Q. I'll read what comes after it. It says,
20 "Thermo Fisher Scientific, Inc. (NYSE TMO) the world leader in
21 serving science and Patheon N.V., (NYSE PTHN), a leading global
22 provider of high-quality drug development and delivery
23 solutions to pharmaceutical and biopharma sectors today
24 announced that their boards of directors have approved Thermo
25 Fisher's acquisition of Patheon. Thermo Fisher will commence a

N6DQgoe2

Gorman - Direct

1 tender offer to acquire all of the issued and outstanding
2 shares of Patheon for \$35 per share," right?

3 A. Yes.

4 Q. Can we please bring up Government Exhibit 108, which we
5 were just looking at, side by side with this press release.

6 If we just zoom in on the management committee summary
7 paragraph again.

8 What was the transaction being discussed in this
9 internal memo?

10 A. It was for Thermo Fisher Scientific to buy Patheon.

11 Q. And what transaction was announced on -- in the press
12 release?

13 A. The same.

14 Q. Let's go to page 5 of the Government Exhibit 108. In the
15 value consideration section, we went over this paragraph, and
16 this was the paragraph that said the initial bid was in a range
17 of \$33 to \$36 a share, right?

18 A. Correct.

19 Q. And the feedback was you got a bid at the high end of the
20 range, right?

21 A. Yes.

22 Q. What was the ultimate agreed-upon price in the press
23 release?

24 A. \$35 a share.

25 Q. Is that at the high end of the \$33 to \$36 share range?

N6DQgoe2

Gorman - Direct

1 A. Yes.

2 Q. Can we please go to page 20 of the memo, which is
3 Government Exhibit 108. What was the indicative date to sign
4 the commitment letters?

5 A. May 8, 2017.

6 Q. What's the date of the press release?

7 A. May 15, 2017.

8 Q. Now, Ms. Gorman, in your experience, when these memos
9 predict an anticipated announce date, do they always stick?

10 A. No.

11 Q. Why not?

12 A. Because people -- they're negotiating the merger agreement,
13 they're negotiating the finance commitment. So those things we
14 expect could take -- it could be on the date, but it could also
15 take some time.

16 Q. In this case, it took a week longer?

17 A. Correct.

18 Q. Let's bring up Government Exhibit 103 in evidence. Let's
19 zoom in on the top third, please.

20 Again, what kind of an email are we looking at here?

21 A. This is FW CMCC-distribution.

22 Q. We haven't talked about the CMCC yet. What does that stand
23 for?24 A. It's the Credit Market Capital Committee. That's a --
25 Firmwide Capital Committee has three what we call children

N6DQgoe2

Gorman - Direct

1 committees. You have CMCC. Then you have an Asia committee.

2 Then you have a different type of lending committee called
3 Structured Finance Capital Committee. So the parent committee
4 is Firmwide Capital Committee, and this is a child committee.

5 Q. So the jury follows it, you're the co-chair of the Firmwide
6 Capital Committee?

7 A. Yes.

8 Q. And there are three subcommittees?

9 A. Correct.

10 Q. One of which is this Credit Market Capital Committee?

11 A. Correct.

12 Q. What's the relationship, if any, between the Credit Market
13 Capital Committee and the Firmwide Capital Committee?

14 A. So Firmwide Capital Committee is still responsible for
15 everything that happens in Credit Market Capital Committee, but
16 there are different people that are involved in the committee
17 and it tends -- the way it is determined is the size of the
18 committee. So over a certain amount, it would go to Firmwide
19 Capital Committee or if anyone had any concerns, risks,
20 reputational, they could send it up to Firmwide.

21 Q. So smaller deals go to the child committee?

22 A. Yes. Better way to say it. Yes.

23 Q. Bigger deals go up to the top?

24 A. Yes.

25 Q. As co-chair of the Firmwide Capital Committee what, if any,

N6DQgoe2

Gorman - Direct

1 oversight do you have over the Credit Market Capital Committee?

2 A. So we're ultimately held responsible, and we get a posting
3 before any of the committees of what's going to the other
4 committees, so that we're aware of them.

5 Q. How does the process, the internal Goldman approval process
6 for the Capital Markets Capital Committee compare to the
7 Firmwide Capital Committee's process?

8 A. So other than the people on the committee, it's identical.

9 Q. Let's go back to the memo, which is Government Exhibit 103.
10 It's to this internal distribution list FW CMCC-distribution,
11 and the parties have stipulated in Government Exhibit 500 that
12 Mr. Goel received this memo.

13 What's the date of the memo?

14 A. February 12, 2017.

15 Q. Again, this one has the For Internal Use Only - Do Not
16 Forward Externally legend?

17 THE COURT: Keep your voice up.

18 MR. NAFTALIS: Sorry, your Honor.

19 Q. This much memo has the For Internal Use Only - Do Not
20 Forward Externally legend, right?

21 A. Yes.

22 Q. Let's look at the attachment, please. We'll go to page 4
23 of the Exhibit, which is page 3 of the memo.

24 Let's look at the top where it says the transaction.
25 It says, "Goldman Sachs has been invited by EQT Partners

N6DQgoe2

Gorman - Direct

1 (Sponsor) to provide committed financing for its bid to acquire
2 Lumos Networks Corporation (Lumos or the Company) for total
3 consideration of approximately \$1 billion."

4 So if you could just break down what is being proposed
5 here.

6 A. Sure. So EQT is a sponsor, so instead of a company
7 purchasing another company, it is a financial sponsor
8 purchasing a company. And they've asked us to provide
9 committed financing so that they can buy Lumos Network for a
10 billion dollars.

11 Q. When you say a financial sponsor, is that like a private
12 equity firm?

13 A. Correct.

14 Q. When you say committed financing, that's a loan?

15 A. Yes.

16 Q. In the memo when it says "for total consideration of an
17 approximately \$1 billion," what does total consideration mean?

18 A. It means how much that they have to pay to buy the company.

19 Q. So EQT is bidding a billion dollars for Lumos?

20 A. Yes.

21 Q. Let's go down a couple paragraphs to the --

22 THE COURT: All right. We're going to take our
23 mid-morning break, ladies and gentlemen. Please do not discuss
24 the case among yourselves or with anyone. Please keep an open
25 mind. We'll be back in action in ten minutes.

N6DQgoe2

Gorman - Direct

1 (Continued on next page)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

N6DQgoe2

Gorman - Direct

1 (Jury not present)

2 MR. BRODSKY: Your Honor, I was just going to raise --
3 I have already previewed it with the government -- a few very
4 minor points. One, the government did.5 THE COURT: You may step down. Do you mind stepping
6 out? And everybody else may be seated.

7 (Witness not present)

8 MR. BRODSKY: Sorry, your Honor.

9 The government let us know this morning, and we
10 appreciated it, that they mentioned in the opening six
11 securities, saying that CBI was not one of the -- they had it
12 seven originally, and then they opened on six, and we asked
13 them which one wasn't in the opening, and they said CBI. So we
14 just wanted to note that for your Honor.

15 THE COURT: Thank you.

16 MR. BRODSKY: The request we had was, your Honor
17 informed us with respect to the healthcare records, specific
18 portions that -- specific language from the healthcare records.19 Would your Honor consider providing us with a redacted
20 page of those portions -- and I'll explain why I would ask for
21 that -- if we cross-examine on that, and we would preview what
22 we would cross-examine in this area because we know the
23 government may want to have a position on it. But what we
24 would intend to do, your Honor, if we had to the redacted page
25 or pages that are relevant from the healthcare records, is it

N6DQgoe2

Gorman - Direct

1 is a lot more effective in refreshing a witness's recollection.

2 I'm not suggesting I'm going to be introducing it, but
3 I find it much more effective -- I know you can use anything to
4 refresh recollection. You can use a paper shoe, paper bag,
5 but -- I could write it down, but that's not as effective to
6 refresh a witness's recollection as a page from somebody's own
7 healthcare records.

8 THE COURT: Thank you for raising it. I appreciate
9 that. It's the right thing to do. I'll give the opportunity
10 to the government to respond.

11 Anything else?

12 MR. BRODSKY: The only other thing, if your Honor --
13 it doesn't have to be now, so...

14 THE COURT: That's fine. Flo, if you can mark this, I
15 guess as Court Exhibit 2, a note from Juror No. 6. And I'm
16 directing my deputy to show it to each side, and you will let
17 me know if there is anything you think I need to do about it,
18 okay?

19 MR. ROTHSCHILD: Your Honor, my apologies. Just
20 noting for the record that TransPerfect, the vendor to whom the
21 defense had issued the subpoena, produced documents in response
22 to the subpoena last night, both to the defense and to the
23 government. We, at our urging, TransPerfect's general counsel
24 was present in the courtroom this morning. We notified the
25 defense of that fact and asked if they had any issues

1 N6DQgoe2

Gorman - Direct

2 surrounding TransPerfect's production to bring to the Court's
3 attention. We heard no issues brought to the Court's
attention.

4 THE COURT: Excellent. Thank you very much.

5 (Recess)

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe2

Gorman - Direct

1 (Jury present)

2 THE COURT: Mr. Naftalis, whenever you're ready.

3 MR. NAFTALIS: Thank you, your Honor.

4 BY MR. NAFTALIS:

5 Q. If we could bring back up Government Exhibit 103. We were
6 on the fourth page of the exhibit.7 Just to remind the jury, we were looking at a memo
8 regarding EQT Partners' bid to acquire a company called Lumos.

9 Is that right, Ms. Gorman?

10 A. Yes.

11 Q. Under the GS Role and Process section, let's just zoom in
12 on that box: In the second sentence, it says "EQT intends to
13 sign and announce a transaction on Monday, February 13, and has
14 asked GS and other lenders for signed commitment papers with no
15 diligence outs."

16 Can you explain to the jury what that means?

17 A. So the financial sponsor has asked us to get approval and
18 provide commitment papers with no outs and plans to announce a
19 transaction on Monday, the 13th.20 Q. When a commitment paper has no diligence outs, what does
21 that mean?22 A. It means we have no outs to get out of that transaction, so
23 it's a binding commitment.

24 Q. To lend the money?

25 A. Correct.

1 N6DQgoe2

Gorman - Direct

1 Q. When it says sign and announce the transaction on the 13th,
2 that means publicly announce it?

3 A. Yes.

4 Q. Let's go to Government Exhibit 331.

5 We offer Government Exhibit 331, your Honor.

6 MR. FORD: No objection.

7 THE COURT: Received.

8 (Government's Exhibit 331 received in evidence)

9 Q. Again, Ms. Gorman, what type of a document are we looking
10 at here?

11 A. This is a form 8K.

12 Q. Is this for Lumos Networks?

13 A. Yes, it is.

14 Q. Let's go to page 7, please. What type of document is
15 attached to this form 8K?

16 A. So this is a press release announcing the transaction.

17 Q. The title of the press release says Lumos Networks enters
18 into definitive agreement to be acquired by EQT Infrastructure.
19 In laymen's terms, what's a definitive agreement?

20 A. It's an agreement.

21 Q. It's an agreement. Okay. It says "EQT Infrastructure to
22 pay \$18 per share, an all cash transaction" right below that?

23 A. Yes.

24 Q. And what's the date of the press release?

25 A. February 20, 2017.

N6DQgoe2

Gorman - Direct

1 Q. And looking at that paragraph where the date was, it says,
2 "The resulting enterprise value is approximately \$950 million."
3 When it says, "The resulting enterprise value is approximately
4 \$950 million," what does that mean?

5 A. It is essentially what they're saying the purchase price is
6 worth, so what they're buying the company for.

7 Q. So for about a billion dollars?

8 A. Yes.

9 Q. Let's bring up Government Exhibit 103 side by side with
10 this, please. Let's go to page 4.

11 So it was the internal memo we were just looking at
12 earlier, right?

13 A. Yes.

14 Q. Let's compare what was in the memo to what was publicly
15 announced. In the internal memo, it says that EQT was
16 considering a deal to buy what company?

17 A. Lumos Networks.

18 Q. In fact, what company did EQT agree to buy?

19 A. Lumos Networks.

20 Q. And in the first paragraph of the internal Goldman memo, it
21 says that EQT was considering paying a total of how much for
22 Lumos?

23 A. Approximately \$1 billion.

24 Q. In the third line.

25 And, in fact, how much did EQT ultimately agree to pay

N6DQgoe2

Gorman - Direct

1 for Lumos?

2 A. Approximately -- \$950 million.

3 Q. Looking on the right side, which is GX-103 of the internal
4 memo, when does the memo say that EQT intended to sign and
5 announce the transaction?

6 A. Monday, February 13.

7 Q. That's right in the middle.

8 And when was the transaction ultimately announced?

9 A. February 20, 2017, a week later.

10 Q. So, again, in your experience, is that unusual for a deal
11 to slip by a week?

12 A. It's not unusual.

13 Q. We can take that down. Let's look at Government Exhibit
14 112 in evidence. Let's look at the top, please.

15 Is this another one of those top sheets that was sent
16 to the Firmwide Capital Committee?

17 A. Yes.

18 Q. What's the date on this email?

19 A. May 9, 2017.

20 Q. Who is the email sent to?

21 A. GS FWCC. distribution.

22 MR. NAFTALIS: And, your Honor, pursuant to Government
23 Exhibit 500, the parties have stipulated that Mr. Goel received
24 this email.

25 Q. The first line of this email again says For Internal Use

N6DQgoe2

Gorman - Direct

1 Only - Do Not Forward Externally, right?

2 A. Correct.

3 Q. Let's look at transaction description, which is that one
4 sentence. Can you read what it says?

5 A. "Goldman Sachs provides committed financing to support
6 KKR's acquisition of PharMerica Corporation."

7 Q. Again, can you just explain what's being proposed here?

8 A. So committed financing is a loan. And to support KKR,
9 which is a financial sponsor, to buy PharMerica Corporation, a
10 public company.

11 Q. So, put another way, the question for the committee is
12 whether Goldman should lend money to this company KKR so it
13 could buy PharMerica?

14 A. Correct.

15 Q. Let's go to page 5 of the exhibit, please, which is page 4
16 of the memo, and we haven't looked at this -- the sources and
17 uses section, let's look on the right side, the uses section,
18 and zoom in on that.

19 The first line says, "Purchase price 30 percent
20 premium" and then it says "\$964." I guess the first question
21 is, is that actually \$964?

22 A. No, it's \$964 million. Everything is in millions on here.

23 (Continued on next page)

N6D6GOE3

Gorman - Direct

1 BY MR. NAFTALIS:

2 Q. And what does the purchase price mean?

3 A. How much they're willing to buy the company for.

4 Q. How much KKR would have paid for --

5 A. PharMerica.

6 Q. And when it says a 30 percent premium, what does that mean?

7 A. So that's saying the premium of where the share price

8 trades today versus what they're willing to pay for it. So

9 30 percent more.

10 Q. I guess should have asked the question more cleanly. Total

11 use is about \$1.49 billion?

12 A. Correct.

13 Q. Is that, in fact, the total purchase price?

14 A. Correct.

15 Q. The 964 million is paying for what?

16 A. That's just the stock and then there are other parts of it.

17 They have to refinance the existing loans that they have, they

18 have to pay fees and then they're putting some small amount of

19 cash to the balance sheet.

20 MR. NAFTALIS: Your Honor, the government now offers
21 Government Exhibit 333.

22 MR. FORD: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 333 received in evidence)

N6D6GOE3

Gorman - Direct

1 BY MR. NAFTALIS:

2 Q. Again, Ms. Gorman, what are we looking at here?

3 A. This is a form 8-K.

4 Q. For the company PharMerica?

5 A. Correct.

6 Q. I think you can guess where we're going to go. So let's go
7 to Page 7.

8 And, again, what type of a document is this?

9 A. This is a public press release announcing the transaction.

10 Q. Can you read the title of the document?

11 A. Sure. "PharMerica Corporation enters into a definitive
12 agreement to be acquired by KKR for \$29.25 per share in cash."

13 Q. And the third line it says "transaction valued at about
14 \$1.4 billion." Is that right?

15 A. Correct.

16 Q. Let's compare this to Government Exhibit 112, please.

17 That's the internal Goldman memo we were just looking
18 at, right?

19 A. Yes.

20 Q. And let's zoom in on the transaction description.

21 Again, according to the internal memo, which company
22 was KKR considering trying to buy?

23 A. PharMerica Corporation.

24 Q. And, in fact, according to the press release, what company
25 did KKR ultimately agree to buy?

N6D6GOE3

Gorman - Direct

1 A. PharMerica Corporation.

2 Q. Let's go to the next page of Government Exhibit 112 --
3 excuse me -- Page 5 of Government Exhibit 112. And looking at
4 the uses section, again.

5 What was the anticipated total purchase price, or
6 total consideration under the total uses section of the memo?

7 A. \$1,490,000,000.

8 Q. And according to the press release, what was the total
9 transaction valued at?

10 A. \$1.4 billion.

11 Q. So a little less?

12 A. Correct.

13 Q. Is that unusual to you?

14 A. No.

15 Q. We can take that down, please.

16 Can we please bring up Government Exhibit 136 in
17 evidence?

18 This e-mail is also sent to the GS FWCC list, right?

19 A. Yes.

20 Q. Is this another one of those e-mails containing a memo to
21 the firm-wide capital committee?

22 A. Yes.

23 MR. NAFTALIS: Your Honor, pursuant to Government
24 Exhibit 500, the parties have stipulated that Mr. Goel received
25 this e-mail at the time.

N6D6GOE3

Gorman - Direct

1 BY MR. NAFTALIS:

2 Q. What's the date on this e-mail, Ms. Gorman?

3 A. May 15, 2018.

4 Q. Just out of curiosity, it says -- the attachment says "Top
5 Gun." Do you see that?

6 A. Yes.

7 Q. What do you understand Top Gun to be a reference to here?

8 A. It's the project name. So whenever you have nonpublic
9 transactions, they come up with the code project name, someone
10 came up with the name Top Gun.11 Q. We'll get to the specifics. Does this memo involve two
12 airlines?

13 A. Yes.

14 Q. Okay. This is when you're having fun as a banker?

15 A. Okay.

16 Q. Let's go to Page 4 of this memo -- this exhibit, which is
17 Page 3 of the memo.18 Let's look at the very top of the exhibit where it
19 says "the transaction."20 It says: Goldman Sachs has been invited by Frontier
21 Airlines, Frontier or the company, and Indigo Partners, the
22 sponsor, to provide an HCL for its indicative bid to acquire
23 Spirit Airlines, Spirit or the target company or the company,
24 for a total equity value consideration of approximately
25 \$3.3 billion, representing a 30 percent premium to the current

N6D6GOE3

Gorman - Direct

1 share price.

2 Can you just break that down for us. What's going on
3 here?

4 A. So Frontier Airlines is the purchaser. They've joined up
5 with a financial sponsor called Indigo Partners. HCL is what
6 stands for a highly confident letter. So this isn't a
7 commitment letter that's like a firm binding agreement. It's a
8 highly confident is when a financial institution say we're
9 highly confident that you could arrange this debt, but it
10 clearly states in the letter, but it's not a commitment, we
11 have diligence and other work to do.

12 So this is Frontier. They have asked us to provide a
13 highly confident so they could bid to acquire Spirit Airlines.

14 Q. Okay. Putting a highly confident letter in the terms of a
15 mortgage, is that like getting prequalified for a mortgage?

16 A. Yes.

17 Q. And it says that the bid would be for a total equity value
18 consideration of approximately \$3.3 billion; is that right?

19 A. Yes.

20 Q. Was the fact that Frontier was considering offering
21 \$3.3 billion public or nonpublic at the time of the memo?

22 A. Nonpublic.

23 Q. To your recollection, did this deal actually go through at
24 the time?

25 A. I don't recall.

N6D6GOE3

Gorman - Direct

1 Q. Sometimes deals don't go through, right?

2 A. Correct.

3 Q. Let's go to GX115 in evidence.

4 Again, what type of a -- let's zoom in on the top, the
5 top part.

6 What type of an e-mail are we looking at here?

7 A. This is the top sheet that goes with the memo.

8 Q. Is this one sent to the firm-wide capital committee again?

9 A. Yes.

10 Q. Who sends this e-mail to the firm-wide capital committee?

11 A. It can be from the deal team depending on the timing, or it
12 can be from another group in investment banking.

13 Q. In this case who sends it?

14 A. Brijesh Goel.

15 Q. Then it says IBD. What does that mean?

16 A. Investment banking division.

17 Q. Have you ever met Mr. Goel?

18 A. No.

19 Q. Let's look at the -- a little further down on this page,
20 the management committee summary paragraph.

21 I'm going to skip to the third sentence of the
22 management committee summary paragraph. It says: By the end
23 of this month, Sprint may enter into exclusive M&A related
24 discussions with another company, (undisclosed so far) which
25 may force Sprint into a blackout phase, limiting their ability

N6D6GOE3

Gorman - Direct

1 to tap public markets for any refinancing or new issuance
2 activity.

3 Break it down for us, what's the memo asking to be
4 approved, and what does this sentence mean?

5 A. So the memo is -- what they're asking to approve is in the
6 first sentence, that they want an 18-month \$3.2 billion loan
7 commitment by the end of August. Goldman Sachs, JP, that's
8 JP Morgan would commit 45 percent and DB is Deutsche Bank,
9 they'll take the other 10 percent. And they want to show
10 liquidity as part of -- to their auditor so that they have
11 money to pay their bills and that they're solvent.

12 The highlighted part is saying that Sprint themselves
13 might be entering into a merger-and-acquisition-related
14 discussions with another company we don't know. That's
15 undisclosed and nonpublic. Which if they did, it would force
16 Sprint, what's called a blackout phase. So we underwrite
17 3.2 billion, you saw the timeline of how we look to sell down.

18 What this is saying is we would be limited in our
19 ability to sell down to the public markets because Sprint would
20 be entering into discussions on a merger and acquisition.

21 Q. And in this case, who was Goldman Sachs' client?

22 A. Our client is Sprint.

23 Q. Let's go to the --

24 THE COURT: When you say "we would be limited in our
25 ability to sell down," you mean Goldman Sachs' customer would

1 N6D6GOE3

Gorman - Direct

1 lack the ability to issue shares in the public market or issue
2 a security in the public market, would thereby impair their
3 ability to pay you back and pay it down.

4 THE WITNESS: Correct.

5 THE COURT: Okay. Thank you.

6 BY MR. NAFTALIS:

7 Q. And part of -- in the highlighted sentence, one of the
8 issues is there might be an M&A deal coming down the pike,
9 right?

10 A. Correct.

11 Q. Which affects what the judge was asking, whether you could
12 sell it down?

13 A. Exactly.

14 Q. Let's go to the first page of the attachment which is
15 Page 3 -- yes, perfect.

16 So this is the first page of the memo, right?

17 A. Yes.

18 Q. Let's zoom in on the left-hand side where it says
19 "structured finance." What is listed here on this first page?

20 A. So this is an investment banking deal team that worked on
21 the transaction.

22 Q. Okay. So these are the actual investment bankers on the
23 deal?

24 A. Yes.

25 Q. And who is listed as the fourth name on this memo?

1 N6D6GOE3

Gorman - Cross

1 A. Brijesh Goel.

2 Q. And just so the jury understands, what is structured
3 finance?

4 A. Structured finance is just a title for a type of
5 transaction, a type of debt financing. So you could do
6 leverage finance, you could do -- which is when you leverage
7 companies up. This is structured finance, so there's some type
8 of structure associated with it.

9 Q. Like a fancy type of loan?

10 A. Yes.

11 Q. We can take that one down.

12 Ms. Gorman, last two questions.

13 During your time at Goldman Sachs, have you received
14 training on how to handle material nonpublic information?

15 A. Yes.

16 Q. And to your understanding, why do you get that training?

17 A. It's to protect our clients as well as it's against the law
18 to give out material nonpublic information.

19 MR. NAFTALIS: No further questions, your Honor.

20 THE COURT: All right. You may cross-examine.

21 MR. FORD: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. FORD:

24 Q. Good morning, how are you?

25 A. Good, thank you.

N6D6GOE3

Gorman - Cross

1 Q. My name is Adam Ford. I represent the defendant Brijesh
2 Goel. You and I have never spoken before; is that correct?

3 A. Correct.

4 Q. Just a few preliminary questions. You just testified
5 you've never -- that you don't know Mr. Goel; is that correct?

6 A. Correct.

7 Q. And can I assume you also do not know a man by the name of
8 Akshay Niranjan?

9 A. No.

10 Q. I just want to show you a picture of Mr. Niranjan. I'm not
11 going to accomplish it to the jury, but it's Government
12 Exhibit 38. If we could just show that to the witness?

13 You can just confirm, you don't know who this
14 individual is, correct?

15 A. No.

16 Q. Obviously, you've never been part of any conversations or
17 discussions between Mr. Goel and Mr. Niranjan?

18 A. No, I have not.

19 Q. Okay. I want to ask you a few questions about the 2017 and
20 2018 time period. You had just testified about a handful of
21 FWCC and CMCC memos, do you remember that?

22 A. Yes.

23 Q. And the government showed you several of these memos; is
24 that right?

25 A. Correct.

N6D6GOE3

Gorman - Cross

1 Q. But, in fact, during 2017 and 2018, in fact, there were
2 lots of these types of memos that were being circulated to the
3 distribution list within Goldman Sachs; is that correct?

4 A. Correct.

5 Q. Can you give the jury an estimate of about -- well, let me
6 break it down. About how many deals per week would the
7 committee be considering such that they be in one of these --

8 THE COURT: Which you committee now?

9 MR. FORD: I'm sorry, thank you, your Honor.

10 BY MR. FORD:

11 Q. Let's start with the FWCC, the firm wide?

12 A. Sure. It depends on the week, but on average we see
13 anywhere between 400 and 500 deals a year in the firm-wide
14 capital committee.

15 Q. That's 400 to 500 in the firm wide. How about in the
16 capital market committee?

17 A. I don't have that detail, but if you add up firm wide and
18 all the committees it's roughly 2,000 a year.

19 Q. Okay. So about 2,000 a year?

20 THE COURT: Well, 2,000 a year is firm wide all
21 committees, is that your testimony?

22 THE WITNESS: Yes.

23 BY MR. FORD:

24 Q. Firm wide, all committees. And whenever there's deals
25 being considered, there's multiple memos that go out for each

N6D6GOE3

Gorman - Cross

1 deal. Is that a fair statement?

2 A. That can be, it can be one memo or if they need to, there
3 could be addendums on top of them.

4 Q. There could be multiple. So sometimes there could be two
5 or three memos per deal, is that fair?

6 A. Typically, it's one but there can be more than one.

7 Q. Okay. Now, with respect to the deals being discussed,
8 we'll stick with the FWCC for now, not all of these deals are
9 related to M&A activity?

10 A. Correct.

11 Q. And, in fact, some relate to securitizations?

12 A. Yes.

13 Q. Can you describe to the jury what securitizations are?

14 A. So securitization is when you bundle up a bunch of loans
15 and then you sell them, you securitize them and make it into a
16 security that someone can then buy.

17 Q. These securitizations, don't have anything to do with
18 merger and acquisition activity?

19 A. They can, depending how a company wants to finance.

20 Q. So some securitizations might relate to M&A activity?

21 A. It can.

22 Q. And some securitizations won't?

23 A. Correct.

24 Q. And both of these types of deals are sent around in the
25 FWCC memos?

N6D6GOE3

Gorman - Cross

1 A. Correct.

2 Q. I'm going to ask you the same question about loans. These
3 memos would also discuss just loans as well, right?

4 A. They're talking about, yes, bridge loans.

5 Q. Bridge loans, sure. And, again, these loans don't
6 necessarily relate to M&A activity, correct?

7 A. They don't have to.

8 Q. So maybe some do?

9 A. Some do and some don't.

10 Q. Okay. Did you mention -- are there other types of
11 financing that could be discussed in these memos?

12 A. Someone could want to build a plant, someone could want to
13 recapitalize, someone could just want to do a sovereign -- a
14 country might want to issue a bond.

15 Q. And in those examples that would also not relate to M&A
16 activity?

17 A. Correct.

18 Q. All right. Do you know about how many people in January,
19 let's say January 2017, were you at Goldman Sachs?

20 A. In January, no. I joined in June.

21 Q. Okay. Do you have a sense of how many people were on the
22 distribution list for the FWCC, e-mail distribution list that
23 we've been talking about?

24 A. I don't know.

25 MR. FORD: Nicolette, if we can pull up DX1260.

N6D6GOE3

Gorman - Cross

1 And, your Honor, the -- if I understand correctly, the
2 government is not objecting to our offering this document.

3 It's --

4 THE COURT: You're offering it at this point.

5 MR. FORD: We're offering at this point.

6 THE COURT: Any objections.

7 MR. NAFTALIS: No, your Honor.

8 THE COURT: It's DX.

9 MR. FORD: 1260, 1260.

10 THE COURT: Received.

11 (Defendant's Exhibit 1260 received in evidence).

12 BY MR. FORD:

13 Q. So, Ms. Gorman, I'm showing you a document produced by
14 Goldman Sachs which in the top left, it says "GS FWCC
15 distribution." And the date is 1/1/2017. Do you see that?

16 A. Yes.

17 Q. And so I understand that you were not yet employed, but do
18 you see about how many people were on the distribution list as
19 of this time?

20 A. 43.

21 MR. FORD: Your Honor, may I approach the witness with
22 a paper copy?

23 THE COURT: You may.

24 BY MR. FORD:

25 Q. So, Ms. Gorman, I apologize, I didn't realize you only had

N6D6GOE3

Gorman - Cross

1 the first page before.

2 With the -- and Nicolette, could you scroll through to
3 the last page, please?

4 A. The number says 268.

5 Q. Okay. So is it fair to say that in January 2017, there
6 were 268 people on the FWCC distribution list?

7 A. Yes.

8 Q. And you don't happen to know the exact number of recipients
9 during the time you were there, do you?

10 The number of Goldman Sachs employees who were on the
11 recipient list for the FWCC e-mails?

12 A. This says 268.

13 Q. Throughout 2017 and '18, is it fair to say that the number
14 was somewhat similar?

15 A. I'm not sure.

16 Q. Okay. And do you have -- do you know about how many people
17 were on the CMCC distribution list?

18 A. No.

19 Q. During the time you were there?

20 A. No.

21 MR. FORD: Your Honor --

22 THE COURT: Yes.

23 MR. FORD: -- the defense offers DX1269 into evidence.

24 THE COURT: Any objection?

25 MR. NAFTALIS: No, your Honor.

N6D6GOE3

Gorman - Cross

1 THE COURT: Received.

2 (Defendant's Exhibit 1269 received in evidence)

3 MR. FORD: Nicolette, if you could pull it up and
4 publish it.

5 BY MR. FORD:

6 Q. Ms. Gorman, just to orient you, this is the CMCC on the top
7 left, you'll see e-mail subject line. CMCC committee memo,
8 this is for Lumos Networks on February 13, 2017; do you see
9 that?

10 A. Yes.

11 Q. And this, on the right side, lists all the individuals that
12 would have -- that received this e-mail; is that fair?

13 A. Yes.

14 Q. And unfortunately, this document doesn't have the exact
15 number of recipients, but is it fair to say that it's about
16 four landscaped pages of lines of recipients?

17 A. Yes.

18 Q. Okay. Nicolette, you can take that down.

19 I want to ask you, Ms. Gorman, a few questions about
20 the CMCC e-mail regarding Lumos that the government asked you
21 about.

22 Nicolette, can you pull up GX103, which is in
23 evidence?

24 Okay, so Nicolette, can we go to Page 18, please?

25 Okay. Ms. Gorman, are you able to see that on your

N6D6GOE3

Gorman - Cross

1 screen?

2 A. Yes.

3 Q. So you see underneath the timetable, it says "event signed
4 commitment letter." Do you see that?

5 A. Yes.

6 Q. And then the indicative date is February 13, 2017. Do you
7 see that?

8 A. Yes.

9 Q. And can you remind me what the indicative date is?

10 A. The indicative date is when Goldman Sachs would sign the
11 loan commitment with the company.

12 Q. Did I hear you say that ordinarily the public announcement
13 would be, you say it was usually the next day after the
14 indicative date?

15 A. Typically shortly thereafter because they are required to
16 note they have signed a merger agreement in the commitment
17 letter.

18 Q. Would they ever have publicly announced it the same day as
19 the indicative letter was signed?

20 A. Depending on the timing, yes.

21 Q. Because it's fully executed at any time of the day, there's
22 an obligation to promptly publicize it.

23 A. Correct.

24 Q. And you testified that sometimes the deal date on the
25 indicative date would slip; is that correct?

1 N6D6GOE3

Gorman - Redirect

1 A. Yes.

2 Q. And sometimes it would slip a few days, correct?

3 A. Correct.

4 Q. And would it ever slip out farther than that?

5 A. It can, if the parties don't come to an agreement when they
6 sign the commitment.

7 Q. But is it fair to say there's nothing in this document that
8 indicates that the deal is going to slip from the indicative
9 date; isn't that correct?

10 A. Correct.

11 MR. FORD: Your Honor, I have no further questions.

12 THE COURT: All right. Redirect.

13 MR. NAFTALIS: Very briefly, your Honor.

14 THE COURT: Sure.

15 REDIRECT EXAMINATION

16 BY MR. NAFTALIS:

17 Q. If we can pull up DX1260, please, which is our -- it's
18 GX142. This is the Excel version of this document.

19 Do you see that, Ms. Gorman?

20 A. I do.

21 Q. You were asked questions about how many people were on the
22 list?

23 A. Yes.

24 Q. Why don't we go to the 91st person on this list?

25 Who is the 91st person on the list?

1 N6D6GOE3

Gorman - Redirect

1 A. Brijesh Goel.

2 Q. We can take that down.

3 MR. NAFTALIS: I think the defense is going to pull up
4 DX1269 for us.

5 I can do the ELMO if you want, do you want me to do
6 the ELMO?

7 BY MR. NAFTALIS:

8 Q. We're looking at DX1269, which is the other document you
9 were shown, Ms. Gorman?

10 A. Yes.

11 Q. If we can go to the second page, please?

12 If you could highlight Brijesh Goel's name, which is
13 right in the middle? It's just below the middle.

14 Do you see that, Ms. Gorman?

15 A. I do.

16 Q. And you testified that all the people on these two
17 exhibits, DX1260 and DX1269 are Goldman Sachs employees,
18 correct?

19 A. Yes.

20 Q. Were any of these employees authorized to disclose the deal
21 terms, the names of the companies, the timing of the deals to
22 anyone outside of Goldman Sachs?

23 A. No.

24 Q. Including Mr. Goel?

25 A. Correct.

N6D6GOE3

Tappeto - Direct

1 MR. NAFTALIS: Okay. No further questions.

2 THE COURT: Thank you. You may step down.

3 Call your next witness.

4 MR. ROTHSCHILD: The government calls Andrew Tappeto.

5 ANDREW TAPPETO,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ROTHSCHILD:

10 Q. Good afternoon, Mr. Tappeto.

11 A. Good morning.

12 Q. How far did you go in school?

13 A. I just received my master's back in 2019.

14 Q. What did you get your master's in?

15 A. Digital forensic science.

16 Q. Where do you work?

17 A. At TransPerfect Legal Solutions.

18 Q. Do you work in a particular subgroup at TransPerfect?

19 A. Yes, I do.

20 Q. What group is that?

21 A. It's the forensic technology and consulting department.

22 Q. What does that group do?

23 A. We handle digital collections from various sources of media
24 and then examinations of that data that we collected.

25 Q. How long have you worked at TransPerfect?

N6D6GOE3

Tappeto - Direct

1 A. Just about five years.

2 Q. What's your title?

3 A. Senior digital forensics examiner.

4 Q. What's your duties and responsibilities as a senior digital
5 forensics examiner?

6 A. I work on different matters for and collect data from
7 specific devices. And I also oversee and supervise other
8 teammates on my team and their work as well.

9 Q. What sorts of devices do you collect data from?

10 A. Mobile devices, computers, laptops, cloud sources, so your
11 Gmail accounts, your Google Drive accounts, things of that
12 nature. Anything digital.

13 Q. When you say you collect data, what do you mean by that?

14 A. Getting data out of a source and into a format that we can
15 use to examine and report on.

16 Q. When did you become a senior digital forensic examiner?

17 A. Back in April of 2022.

18 Q. What was your title before that?

19 A. Digital forensics examiner.

20 Q. When did you become a digital forensics examiner?

21 A. April of 2020.

22 Q. What was your title before that?

23 A. Digital forensics technician.

24 Q. And you mentioned that as a senior digital forensics
25 examiner your duties and responsibilities include collecting

N6D6GOE3

Tappeto - Direct

1 data from mobile devices; is that right?

2 A. That's correct.

3 Q. Does that mean cell phones?

4 A. Yes.

5 Q. Approximately how many cell phones have you collected data
6 from during your time at TransPerfect?

7 A. Hundreds.

8 Q. During the course of your duties, did there come a time
9 when you collected data from a cell phone belonging to an
10 individual named Akshay Niranjan?

11 A. Yes.

12 Q. Around when did you collect data from Mr. Niranjan's phone?

13 A. June of 2022.

14 Q. And did you collect data from that phone on more than one
15 occasion in June of 2022?

16 A. Yes, I did.

17 Q. When was the first occasion?

18 A. On June 2nd of 2022.

19 Q. And directing your attention to what's been marked for
20 identification as Government Exhibit 381.

21 Do you recognize that, sir?

22 A. I do.

23 Q. What is it?

24 A. This is our chain of custody form.

25 MR. ROTHSCHILD: Government offers Government Exhibit

N6D6GOE3

Tappeto - Direct

1 381?

2 MR. BRODSKY: No objection.

3 THE COURT: Received.

4 (Government's Exhibit 381 received in evidence)

5 BY MR. ROTHSCHILD:

6 Q. Mr. Tappeto, can you please explain to the jury what this
7 document is?

8 A. Yes. So this is our chain-of-custody form which is a form
9 that pretty much shows the possession of a device at a specific
10 date and time and who has possession of that device.

11 Q. And what's the purpose of this document?

12 A. For internal tracking purposes, to show when either myself
13 or someone else has custody of a device.

14 Q. And you see at the top where it says "case number"?

15 A. Yes.

16 Q. What does that refer to?

17 A. That is our internal TransPerfect case number.

18 Q. And you see a little further down where it says
19 "custodian." Can you read what it says there?

20 A. Akshay Niranjan.

21 Q. And who is that?

22 A. That is the custodian of this phone -- or the owner of this
23 phone.

24 Q. And do you see a little bit to the right and above that it
25 says "serial number." What's that refer to?

N6D6GOE3

Tappeto - Direct

1 A. That is the serial number of the phone.

2 Q. And then the bottom half of the document says "chain of
3 custody," right?

4 A. Yes.

5 Q. And what's the first name under the "released by" heading?

6 A. Akshay Niranjan.

7 Q. And what's the first name under the received by column?

8 A. Andrew.

9 Q. Andrew?

10 A. Myself, Andrew Tappeto.

11 Q. Okay. And so what does that signify, Mr. Tappeto?

12 A. That means on June 2, 2022, at 4:35 p.m. Akshay handed me
13 his mobile device.

14 MR. ROTHSCHILD: Okay. We can take that down.

15 BY MR. ROTHSCHILD:

16 Q. Mr. Tappeto, after you got Mr. Niranjan's phone on June 2,
17 2022, what did you do with it?

18 A. I used a forensic tool to actually collect data from the
19 device.

20 Q. What's the forensic tool?

21 A. Cellebrite.

22 Q. Can you describe at a high level what is Cellebrite?

23 A. It's an industry standard mobile device forensic tool that
24 allows us to collect data from various mobile devices.

25 Q. And what are some of the types of data that you collected

N6D6GOE3

Tappeto - Direct

1 from the phone?

2 A. Text messages, call logs, contacts, calendar entries,
3 photos and videos.

4 Q. And was there more than one type of message that you
5 collected using Cellebrite?

6 A. Yes.

7 Q. What were some of the types of messages?

8 A. Native iMessages and WhatsApp were two message categories.

9 Q. Were you able to use Cellebrite to collect each type of
10 message that was on the phone?

11 A. No.

12 Q. What type of message couldn't you collect with Cellebrite?

13 A. Signal messages.

14 Q. Do you know what Signal is?

15 A. It is a third-party application used for messaging.

16 Q. And so how, if at all, did you collect Signal messages from
17 the phone?

18 A. We used a screenshot method to collect those messages.

19 Q. After you collected the data from Mr. Niranjan's phone on
20 June 2, 2022, did you return the phone to him?

21 A. I did.

22 Q. If we could pull back up Government Exhibit 381.

23 When did you return the phone to him?

24 A. At 6:34 p.m.

25 Q. On that same day?

N6D6GOE3

Tappeto - Direct

1 A. Yes.

2 Q. We can take that down.

3 Once you had the data from Mr. Niranjan's phone, what,
4 if anything, did you do with that data?

5 A. I was directed to generate reports of the data.

6 Q. And what's a report?

7 A. A report is a -- depending on the file format that you
8 choose for a report, it shows data within the phone and the
9 content of that data.

10 Q. When did you generate the reports from the collection on
11 the June 2, 2022, collection?

12 A. On June 3rd.

13 Q. And did you generate a report that included all the
14 messages on the phone except for the Signal messages that we
15 discussed?

16 A. Yes.

17 Q. What format was that report in?

18 A. There were a few different formats.

19 Q. What was one of them?

20 A. Microsoft Excel?

21 Q. You reviewed that report?

22 A. I have.

23 Q. And just so we understand each other, is it okay if I refer
24 to that as the June 2, 2022, messages report?

25 A. Yes.

1 N6D6GOE3

2 Tappeto - Direct

3
4 Q. Does the June 2, 2022, messages report have rows and
5 columns?
67 A. It does.
89 Q. What are some of the columns?
1011 A. Some of the columns would be a participants column, a
12 message column, and a source column.
1314 Q. What's the participants column?
1516 A. The participants column is going to have all of the
17 individuals that are part of a group chat or a group thread.
1819 Q. So it could be more than two?
2021 A. It can be.
2223 MR. ROTHSCHILD: May I approach, your Honor?
2425 THE COURT: You may.
12 MR. ROTHSCHILD: Thank you.
34 MR. BRODSKY: Your Honor, I'd like to look at a copy.
56 THE COURT: Of course.
78 MR. BRODSKY: Your Honor, can we see the Court at
9 sidebar?
1011 THE COURT: Ladies and gentlemen, you are welcome to
12 stand up and stretch for a moment. Let me see everyone at
13 sidebar.
1415 (Continued on next page)
16
17
18
19
20
21
22
23
24
25

N6D6GOE3

Tappeto - Direct

1 (At the sidebar)

2 MR. BRODSKY: Your Honor, the government has just
3 marked a series of three exhibits as I understand it. One of
4 them is a comparison report.

5 MR. ROTHSCHILD: No. 255.

6 MR. BRODSKY: Yes, I'm told it is.

7 MR. ROTHSCHILD: 255 is not a comparison report.

8 THE COURT: Wait a minute. If you two want to talk to
9 each other and confer and then come back to me. That's fine.

10 (Defendant and counsel confer)

11 MR. BRODSKY: Your Honor, may I make a suggestion,
12 your Honor, given the hour, that we clear this up over -- if
13 this is an appropriate time for a lunch break, or do you want
14 me to clear it up now?

15 THE COURT: What's involved in clearing up?

16 MR. BRODSKY: We're looking at what 255 is, exhibits
17 in 255.

18 THE COURT: All right. I'll take a break.

19 (Continued on next page)

20

21

22

23

24

25

N6D6GOE3

Tappeto - Direct

1 (In open court)

2 MR. ROTHSCHILD: Your Honor, shall I proceed?

3 THE COURT: All right. Ladies and gentlemen, rather
4 than delay you further, because I'm very jealous of your time
5 and its efficient use, we're going to break early for lunch,
6 and I'm going to ask you to be back at 20 minutes to 2:00,
7 which is 1:40, and we'll pick up then. So you have a full hour
8 for lunch, and we'll be ready to go at 1:40.9 As always, please do not discuss the case among
10 yourselves or with anyone. Please keep an open mind. We'll be
11 back in action then.

12 Thank you.

13

14

15

16

17

18

19

20

21

22

23

24

25

N6D6GOE3

Tappeto - Direct

1 (Jury not present)

2 THE COURT: All right. We're in recess, I'll see you
3 at 1:30, then.

4 (Luncheon recess)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe4

1 AFTERNOON SESSION

2 1:30 p.m.

3 (In open court)

4 ANDREW TAPPETO, resumed.

5 THE COURT: Please remain standing for our jury. I
6 understand the issue was worked out. And you can go to the
7 podium, Mr. Rothschild.

8 (Jury present)

9 THE COURT: You guys are great jurors. You're back on
10 time. You're ready to go. I appreciate that very much. It's
11 the way to do this, so I appreciate it. Thank you.

12 Mr. Rothschild, whenever you're ready.

13 MR. ROTHSCHILD: Thank you, your Honor. May I
14 approach the witness?

15 THE COURT: You may.

16 BY MR. ROTHSCHILD:

17 Q. Mr. Tappeto, I've handed you a disk that's been marked for
18 identification as Government Exhibit 601. Do you recognize
19 that?

20 A. I do.

21 Q. Have you seen that particular disk before?

22 A. Yes, I have.

23 Q. How do you know?

24 A. My initials are on it.

25 Q. Do you see your initials there on that disk?

N6DQgoe4

1 A. Yes, I do.

2 Q. Did you review the files that are on that disk,
3 Mr. Tappeto?

4 A. Yes.

5 Q. And is one of them called GX-253?

6 A. Yes.

7 Q. Have you reviewed GX-253?

8 A. Yes.

9 Q. What type of file is that?

10 A. It's an Excel file.

11 Q. Is the data that's on GX-253 a subset of the data that's on
12 the June 2, 2022 messages report that you testified about
13 earlier?

14 A. Yes.

15 Q. How do you know that?

16 A. There are a couple of pieces of information that I could
17 look at to make that decision. The first would be the general
18 layout and format of the Excel report. It has the same kind of
19 column, same coloring scheme, the same title.

20 On top of that, there's a specific source file
21 information column within both the message Excel report that I
22 generated and then the subset, and the database files that
23 actually house text messages. Those sizes are the same on the
24 subset report, the 253 report and my main June 2 report as
25 well.

N6DQgoe4

1 Q. Can you explain what you mean by the database size?

2 A. Yeah. So a database file, it's a relational file that
3 houses information. So, for example, text messages, the
4 database file will have the message body, the participants,
5 timestamps, the source of the message, so on and so forth.

6 Q. How else did you confirm that the data on Government
7 Exhibit 253 is a subset of the data from your June 2, 2022
8 messages report?

9 A. So another thing I did was on my June 2 message report, I
10 filtered by participant for an individual named Brijesh Goel
11 and the rows that showed up after I filtered for that search
12 matched the rows in GX-253.

13 Q. That was using the participants column that you referred to
14 earlier?

15 A. Yeah, that's correct.

16 Q. Mr. Tappeto, directing your attention back to the disk
17 that's been marked for identification as Government Exhibit
18 601, is there a file on that disk called Government Exhibit
19 255?

20 A. There is.

21 Q. Have you reviewed that file?

22 A. I have.

23 Q. What type of file is it?

24 A. It's an Excel file.

25 Q. Is the data that's on Government Exhibit 255 a subset of

N6DQgoe4

1 the data that's on Government Exhibit 253?

2 A. Yes.

3 Q. How do you know?

4 A. I was able to individually go through each text message and
5 I found it in 255 -- or 253.

6 Q. Does that mean that the data that's on Government Exhibit
7 255 is a subset of the data that was in your June 2, 2022
8 messages report?

9 A. Yes.

10 MR. ROTHSCHILD: The government would offer Government
11 Exhibit 255.

12 MR. BRODSKY: Your Honor, may I voir dire a little bit
13 on 255?

14 THE COURT: Yes.

15 MR. BRODSKY: Thank you very much.

16 VOIR DIRE EXAMINATION

17 BY MR. BRODSKY:

18 Q. Mr. Tappeto, Government Exhibit 255, the subset of
19 messages, WhatsApp messages, correct?

20 A. That's correct.

21 Q. That's a subset of WhatsApp messages from Government
22 Exhibit 253, you said?

23 A. Yes.

24 Q. Government Exhibit 253 has approximately over 80,000
25 WhatsApp messages, do you know?

N6DQgoe4

1 A. I do not know.

2 Q. Okay. With respect to the subset that you were -- that you
3 selected and pulled out, was it your decision to select and
4 pull those out?

5 A. It was not.

6 Q. Do you have any idea about personal knowledge about the
7 contents of what was pulled out from Government Exhibit 253 for
8 identification into Government Exhibit 255 for identification?

9 A. I do not.

10 Q. You have no idea what any of the messages mean, correct?

11 A. Correct.

12 Q. You have no idea whether it has any relevance to this
13 matter?

14 A. Correct.

15 MR. BRODSKY: Your Honor, we object to 255 coming into
16 evidence.

17 THE COURT: All right. Overruled. It's received.

18 (Government's Exhibit 255 received in evidence)

19 BY MR. ROTHSCHILD: (CONTINUED)

20 Q. Ms. Sonderby, could you pull up Government Exhibit 255,
21 please?

22 Mr. Tappeto, what does it say at the top of the
23 spreadsheet here?

24 A. Chats.

25 Q. When you referred to the title or the label as being

N6DQgoe4

1 similar in 253 to what you had reviewed in your messages
2 report, is that what you were referring to?

3 A. Yes.

4 Q. Let's scroll over to column AF, please. What's the heading
5 of that column?

6 A. Participants.

7 Q. Is that the participants column you were testifying about
8 earlier?

9 A. Yes.

10 MR. ROTHSCHILD: One moment, your Honor. We can take
11 that down Ms. Sonderby.

12 Q. Mr. Tappeto, during the course of your duties, did there
13 come a second time when you collected data from the cellphone
14 belonging to Akshay Nirajan?

15 A. Yes.

16 Q. Around when was that?

17 A. On June 10, 2022.

18 Q. Directing your attention to what's been marked for
19 identification as Government Exhibit 383, do you recognize
20 this, sir?

21 A. Yes, I do.

22 Q. What is it?

23 A. It's a chain of custody form.

24 Q. Is this one that you've reviewed?

25 A. Yes.

N6DQgoe4

1 MR. ROTHSCHILD: The government offers Government
2 Exhibit 383.

3 MR. BRODSKY: No objection, your Honor.

4 THE COURT: Received.

5 (Government's Exhibit 383 received in evidence)

6 Q. Ms. Sonderby --

7 THE COURT: Just let me just understand something.
8 The first text messages -- grouping of text messages you
9 extracted when or you took when?

10 THE WITNESS: On June 2, 2022.

11 THE COURT: And this is what date?

12 THE WITNESS: June 10, 2022.

13 THE COURT: Okay. Thank you very much.

14 MR. ROTHSCHILD: Thank you, your Honor.

15 Ms. Sonderby, could you please display Government
16 Exhibits 381 and 383 side by side.

17 Q. Mr. Tappeto, how do you know the phone that you got from
18 Mr. Niranjan on June 10, 2022 was the same phone that you'd
19 received from him on June 2, 2022?

20 A. It bears the same serial number.

21 Q. On both of these chain of custody forms?

22 A. Yes.

23 Q. We can take that down. If we just pull back up 383.

24 Directing your attention to the bottom of this
25 document, Mr. Tappeto, what's the name under the "released by"

N6DQgoe4

1 column?

2 A. Akshay.

3 Q. What's the last name?

4 A. Niranjan.

5 Q. What's the first name you see under received by?

6 A. Andrew.

7 Q. Is that you, Mr. Tappeto?

8 A. Yes, sir.

9 Q. What does that signify?

10 A. That I received custody of that iPhone.

11 Q. We can take that down.

12 Mr. Tappeto after you got Mr. Niranjan's phone on
13 June 10, 2022, what did you do with it?

14 A. I used Cellebrite to create a collection of the data from
15 the phone.

16 Q. What type of data did you collect?

17 A. All of the data.

18 Q. What did you do with that data?

19 A. I then generated another report.

20 Q. What was on that report?

21 A. That report was just limited to text messages.

22 Q. What types of messages?

23 A. iMessages and WhatsApp.

24 Q. Did you collect signal messages on June 10, 2022?

25 A. I did not.

N6DQgoe4

1 Q. Once you had the data from Mr. Niranjan's phone on June 10,
2 2022, what, if anything, did you do with that data?

3 A. I generated a report.

4 Q. Around when did you generate the report?

5 A. I believe it was on June 10 or June 11.

6 Q. Did you generate a report that included all of the messages
7 that were on the phone except for signal messages?

8 A. Yes.

9 Q. What format was that report in?

10 A. There were a few formats.

11 Q. What was one of them?

12 A. Excel.

13 Q. Have you reviewed that report?

14 A. I have.

15 Q. Just so we understand each other, is it okay if I refer to
16 that report as the June 10, 2022 messages report?

17 A. Yes.

18 Q. Directing your attention back to the disk that's been
19 marked as Government Exhibit 601, is one of the files on that
20 disk called Government Exhibit 254?

21 A. Yes.

22 Q. Have you reviewed that file?

23 A. I have.

24 Q. What type of file is it?

25 A. It's an Excel file.

N6DQgoe4

1 Q. Is the data that's on Government Exhibit 254 a subset from
2 the data of the June 10, 2023 messages report?

3 A. Yes.

4 Q. How do you know that?

5 A. I was able to take a look at both my June 10 message report
6 and Government Exhibit 254, and I compared the formatting and
7 layout of the Excel, and it looked the same. The columns were
8 the same. The database files and that source file information
9 path matched size-wise on both my report and 254.

10 Q. Did you do anything else to compare the two documents?

11 A. Yes, I also filtered down by participants to Brijesh Goel,
12 and the rows matched, but there was a discrepancy of 12
13 messages.

14 Q. Can you explain that discrepancy?

15 MR. BRODSKY: Objection, your Honor.

16 THE COURT: Yes, I'm going to sustain an objection to
17 that.

18 Q. Mr. Tappeto all the data on Government Exhibit 254 is also
19 in your June 10, 2022 messages report?

20 A. Yes.

21 MR. ROTHSCHILD: One moment, your Honor.

22 Q. Mr. Tappeto, if I heard you correctly before, you said you
23 filtered down using the name Brijesh Goel on your June 10
24 messages report?

25 A. That's correct.

N6DQgqe4

Tappeto - Cross

1 Q. What did that reveal?

2 A. A subset of messages.

3 Q. How did that relate to Government Exhibit 254?

4 A. They were the same messages.

5 MR. ROTHSCHILD: One moment, your Honor.

6 No further questions.

7 THE COURT: Thank you.

8 Cross.

9 MR. BRODSKY: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. BRODSKY:

12 Q. Good afternoon, Mr. Tappeto.

13 A. Good afternoon.

14 Q. Your client is Akshay Niranjan, correct?

15 A. Yes.

16 Q. And your firm is TransPerfect, right?

17 A. Yes.

18 Q. And your firm TransPerfect is being paid by Mr. Niranjan in
19 connection with this matter, correct?

20 A. That I don't know.

21 Q. Have you seen the -- withdrawn.

22 MR. BRODSKY: One moment, your Honor.

23 THE COURT: Yes.

24 Q. You do know Mr. Niranjan is the client of TransPerfect in
25 this matter, correct?

N6DQgoe4

Tappeto - Cross

1 A. Yes.

2 Q. And you do know that Mr. Niranjan turned his phone over to
3 you on June 2, 2022?

4 A. Yes.

5 Q. And you know that Mr. Niranjan's law firm -- withdrawn.

6 Mr. Niranjan hired a law firm, correct?

7 A. Yes.

8 Q. And that law firm, TransPerfect sends its bills in
9 connection with this matter to that law firm?

10 A. I don't know.

11 MR. BRODSKY: May I approach your Honor?

12 THE COURT: Go ahead.

13 Q. I'm showing you, Mr. Tappeto, Defense Exhibit 1247 for
14 identification. If you would take a moment, please, to take a
15 look at that document. Let me know when you're finished.

16 A. Finished.

17 Q. Have you seen TransPerfect's engagement letters before?

18 A. Yes.

19 Q. And this is a TransPerfect engagement letter, correct?

20 A. That's correct.

21 Q. And you're also familiar with Mr. Niranjan's signature as
22 reflected on the chain of custody reports that you were asked
23 questions about on direct examination, correct?

24 A. That's correct.

25 Q. So if you turn to the last page of Defense Exhibit 1247, do

156DQgoe4

Tappeto - Cross

1 you recognize Mr. Niranjan's signature on it?

2 A. Yes.

3 Q. And you're familiar with the name of the TransPerfect
4 individual David Burdier who signed it?

5 A. Yes.

6 Q. And you're familiar, of course, with the law firm that
7 signed it as well?

8 A. Yes.

9 THE COURT: Well, the document is not in evidence.

10 MR. BRODSKY: Your Honor, we offer it.

11 THE COURT: All right. Any objection?

12 MR. ROTHSCHILD: Yes, your Honor.

13 THE COURT: All right. Let me see you at sidebar.

14 (Continued on next page)

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe4

Tappeto - Cross

1 (At the sidebar)

2 THE COURT: Let me see whether I understand. The
3 purpose is to show that the Morvillo firm executed the
4 agreement, and that it's an agreement with the Morvillo firm.
5 No?

6 MR. BRODSKY: Mr. Niranjan signed it as the client.

7 THE COURT: Right.

8 MR. BRODSKY: The purpose is that in the agreement,
9 it's clear that the invoices go to the law firm, and that
10 Mr. Niranjan pays for them.11 THE COURT: Right. And the law firm is defined, and
12 they're a signatory to the agreement?

13 MR. BRODSKY: Yes, sir.

14 THE COURT: So your purpose is to show that the law
15 firm had signed the agreement?16 MR. BRODSKY: My purpose its to show Mr. Niranjan
17 signed the agreement, and that TransPerfect's fees are being
18 paid for by Mr. Niranjan.19 THE COURT: Right. Okay. So you don't need Morvillo
20 being a party to the agreement. That's not -- you're not
21 trying to show that.

22 MR. BRODSKY: No, I don't need that.

23 THE COURT: I wanted to make sure. So that could be
24 redacted?

25 MR. BRODSKY: Yeah.

N6DQgoe4

Tappeto - Cross

1 THE COURT: Any objection?

2 MR. BRODSKY: I'm happy with it.

3 MR. THOMAS: No, Judge.

4 THE COURT: With the redaction of the Morvillo firm,
5 that's fine.

6 MR. BRODSKY: Your Honor, I don't need to show it. I
7 could show -- I could ask questions.

8 THE COURT: Good. Good enough. Thanks.

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe4

Tappeto - Cross

1 (In open court)

2 THE COURT: Once in awhile in a trial there is
3 material in a document which may not be relevant, and so that
4 is not part of the exhibit. It's known as that portion having
5 been redacted, which is a fancy name for covered over. All
6 right?7 Now, the fact that a portion of a document is redacted
8 is not something of your concern. It's something that's done
9 with the Court's approval because a matter may or may not be
10 relevant to a particular. And so that's all redacted is.

11 But as redacted, you're offering DX-1247, correct?

12 MR. BRODSKY: Correct, your Honor.

13 THE COURT: Any objection?

14 MR. ROTHSCHILD: No, your Honor.

15 THE COURT: It's accepted as redacted.

16 (Defendant's Exhibit 1247 received in evidence)

17 Q. We won't put it on the screen because of the redactions to
18 take place, your Honor, so we don't need to put it on.19 But you're looking at on the screen just yourself,
20 Mr. Tappeto, that Mr. Niranjan signed the agreement as a
21 signatory on June 2, 2022, correct?

22 A. Yes.

23 Q. And if I could ask you to turn or ask my colleague to put
24 on the screen for you the page that describes terms and
25 conditions. And it's probably the fifth page of the document.

N6DQgqe4

Tappeto - Cross

1 The next page.

2 And you're only seeing it because of redactions that
3 will take place, but if you would read silently to yourself the
4 first paragraph or the first couple of sentences of that first
5 paragraph that follows invoicing and payment.

6 THE COURT: I am not sure I understand what you're
7 asking him to read.

8 MR. BRODSKY: Under paragraph 1?

9 THE COURT: Yes, I see paragraph 1.

10 MR. BRODSKY: The first, I would say, four sentences
11 of invoicing and payment.

12 THE COURT: All right. Okay. Thank you very much.

13 Q. Mr. Tappeto, am I correct that the agreement between
14 TransPerfect and Mr. Niranjan states, "The obligation for
15 payment of TLS's fees is solely the responsibility of client"?

16 A. That's correct.

17 Q. And the client, of course, is Mr. Niranjan?

18 A. That's correct.

19 Q. If we can scroll back two other pages where it has the
20 pricing for services, you had testified, Mr. Tappeto, that you
21 were a senior digital forensic examiner starting in or about
22 April 2022?

23 A. Yes.

24 Q. And I think we have to take down the first -- well, you
25 have the document in front of you, Mr. Tappeto, and it's on

N6DQgoe4

Tappeto - Cross

1 your screen.

2 MR. BRODSKY: Can we publish this page, your Honor? I
3 don't believe it requires any redactions.

4 THE COURT: Sure.

5 Q. Looking at this page of DX-1247, what is your hourly rate
6 as reflected in this agreement?

7 A. \$595.

8 Q. You're under the senior forensic consulting and analysis
9 per hour?

10 A. Yes.

11 Q. You're not the only one at TransPerfect who was involved in
12 this engagement, right?

13 A. No.

14 Q. There were multiple other people?

15 A. Yes.

16 Q. Approximately how many other people were involved in this
17 engagement on behalf of Mr. Niranjana?

18 A. No more than a handful.

19 Q. No more than five?

20 A. Yes.

21 Q. Including yourself?

22 A. Yes.

23 Q. All right. And various people doing various tasks over
24 various projects, fair?

25 A. Yes.

N6DQgoe4

Tappeto - Cross

1 Q. So did your rate go up in 2023 because of inflation like
2 everything else?

3 A. No.

4 Q. Let me just summarize here a little bit, and then I will go
5 directly to June 2.

6 Your firm and your work for Mr. Niranjan on June 2,
7 2022 involved phone collection, pulling information from
8 Mr. Niranjan's cellular telephone?

9 A. Yes.

10 Q. And you billed for that time, correct?

11 A. Yes.

12 Q. As did other people?

13 A. Yes.

14 Q. And approximately how many hours altogether was that work,
15 including the reports you ran afterwards?

16 A. For June 2?

17 Q. In connection with June 2, so not just the work on June 2
18 but subsequent to June 2, you're running reports, you're doing
19 other work?

20 A. Probably three to four hours.

21 Q. There is a notation -- withdrawn.

22 Are you aware of estimates of 10 to 15 hours to pull
23 data and produce a report?

24 A. No.

25 Q. Okay. We will come back to it.

N6DQgoe4

Tappeto - Cross

1 In connection with pulling your phone, you also
2 communicated with Mr. Nirajan, correct?

3 A. Yes.

4 Q. And you communicated with people representing Mr. Nirajan?

5 A. Yes.

6 Q. And you billed that time too?

7 A. Yes.

8 Q. On June 10, 2022, when you did that work, you also billed
9 Mr. Nirajan for all that work?

10 A. Yes.

11 Q. And then there was additional work done in or about
12 November 2022. Is that fair?

13 A. That's correct.

14 Q. And that involved multiple people doing additional work in
15 connection with data, correct?

16 A. Correct.

17 Q. And all that time was billed too?

18 A. Yes.

19 Q. And the next time you did work was approximately
20 February 2023. Is that fair?

21 A. Yes.

22 Q. And in February 2023, you were collecting audio files from
23 a phone of Aditi Khullar?

24 A. Yes.

25 Q. And the name Aditi Khullar appears in your chain of

N6DQgqe4

Tappeto - Cross

1 custody, so I thought we might put that up to reference the
2 name. Government Exhibit 383 in evidence, if we can put that
3 up.

4 This was the collection of the phone on June 10, 2022,
5 right?

6 A. Yes.

7 Q. So you had pointed out Mr. Niranjan came to pick up the
8 phone on June 10, 2022 at 2:06 p.m.?

9 A. Yes.

10 Q. Then there's another name below on June 10, 2022 at
11 5:22 p.m. I see your name, Andrew Tappeto, that's correct?

12 A. Yes.

13 Q. The name next to it, Aditi Khullar, is the person who
14 picked up the phone at 5:22 p.m.?

15 A. Yes.

16 Q. And you were present when Aditi Khullar picked up
17 Mr. Niranjan's phone?

18 A. Yes.

19 Q. Now, you've done work in connection with your testimony
20 today since early last week, right?

21 A. Yes.

22 Q. You met a number of times with the government, correct?

23 A. Yes.

24 Q. You met a number of times with representatives for
25 Mr. Niranjan?

N6DQgoe4

Tappeto - Cross

1 A. Yes.

2 Q. Did you also talk to Mr. Niranjan over the last week?

3 A. No.

4 Q. And you met me approximately last Wednesday, correct?

5 A. Yes.

6 Q. For about 45 minutes maybe?

7 A. Yeah, that's correct.

8 Q. And for all that -- and then you prepared for your
9 testimony today, correct?

10 A. Yes.

11 Q. And that took time, right?

12 A. Yes.

13 Q. So since early last week, approximately how much of your
14 time did you spend on this?

15 A. I don't know. That -- I don't know.

16 Q. But for all that time, you're billing the same hourly rate,
17 595 or so an hour?

18 A. It depends.

19 Q. It depends. All right.

20 Is the meter still on today?

21 A. Yes.

22 Q. Okay. So you're being paid by the hour today?

23 A. Yes.

24 Q. And Mr. Niranjan is paying those fees?

25 A. I don't know. I would assume.

N6DQgqe4

Tappeto - Cross

1 Q. Okay. The total estimate fees between the time you started
2 work for Mr. Nirajan on June 2, 2022 through today is
3 approximately 50 to a hundred thousand dollars?

4 A. I don't recall.

5 Q. Let me go to the collection of the phone on June 2, if you
6 don't mind, and on June 2 -- we could turn to Government
7 Exhibit 381 in evidence.

8 Do I have my understanding correctly in your testimony
9 on direct examination that on June 2, 2022, Mr. Nirajan took
10 this iPhone 11 Pro to your office and handed it to you?

11 A. Yes.

12 Q. And there's a name Brijesh there, but you don't know
13 anybody named Brijesh, correct?

14 A. Correct.

15 Q. To your knowledge, Brijesh Goel had nothing to do with the
16 collection of this phone, correct?

17 A. I don't know.

18 Q. And he signed in the phone to you at 4:35 p.m., right?

19 A. Yes.

20 Q. And then you did your data pull, which we'll talk about in
21 a minute, and then he signed it out, picked it back up at
22 6:34 p.m.?

23 A. Yes.

24 Q. So about two hours to collect the data in the phone?

25 A. Yes.

N6DQgoe4

Tappeto - Cross

1 Q. Do we have Defense Exhibit 12 -- actually, I have it.

2 MR. BRODSKY: May I approach, your Honor?

3 THE COURT: You may.

4 BY MR. BRODSKY:

5 Q. I'm showing you, Mr. Tappeto, Defense Exhibit 1248 for
6 identification.

7 Prior to coming to court today, did you -- are you
8 familiar with this document that TransPerfect provided to us?

9 A. Yes.

10 Q. And is it fair to characterize this as a reflection of the
11 various data categories that were pulled from Mr. Niranjan's
12 cellphone on June 2, 2022 with counts and a column called
13 deleted?

14 A. Yes.

15 Q. Now, the deleted column here does not mean that no data was
16 deleted prior to June 2, right?

17 A. That's correct.

18 Q. What it means is that anything deleted before June 2 was
19 not recoverable, correct?

20 A. Yes.

21 MR. BRODSKY: So, your Honor, we offer DX-1248.

22 THE COURT: Any objection?

23 MR. ROTHSCHILD: No, your Honor.

24 THE COURT: Received.

25 (Defendant's Exhibit 1248 received in evidence)

N6DQgoe4

Tappeto - Cross

1 MR. BRODSKY: May we publish?

2 THE COURT: You may.

3 Q. Mr. Tappeto, there are a lot of different categories here,
4 and, once again, this is an extraction method that was chosen
5 by Mr. Niranjan and his representatives in connection with what
6 you pulled from the phone, correct?

7 MR. ROTHSCHILD: Objection.

8 THE COURT: One moment, please. Rephrase your
9 question, please.

10 Q. This data as reflected in 1248 -- Defense Exhibit 1248 in
11 evidence reflects the results numerically of what you pulled
12 from Mr. Niranjan's cellphone?

13 THE COURT: Do you understand the question?

14 THE WITNESS: Yes.

15 THE COURT: You may answer.

16 A. Yes.

17 Q. And there were multiple ways to pull data from a cellphone,
18 correct?

19 A. Yes.

20 Q. And with the technology you used, there are at least three
21 different methods?

22 A. Yes.

23 Q. You didn't select which method to use, right?

24 A. I did.

25 Q. You did?

N6DQgoe4

Tappeto - Cross

1 A. Yes.

2 Q. And you chose a method that was less fulsome than the two
3 alternative methods?

4 A. Yes.

5 Q. The other alternative methods would have pulled more data
6 from the phone?

7 A. Possibly.

8 Q. Well, the reason why the other two alternative methods are
9 more fulsome is because they usually cover more data on the
10 phone than the method chosen here?

11 A. Yes.

12 Q. Now, directing your attention, for example, to the category
13 of, let's say, chats. Do you see that category?

14 A. Yes.

15 Q. It says 497,700, right?

16 A. Yes.

17 Q. Do I have this correct that you pulled 497,700 chats
18 between Mr. Goel and Mr. Nirajan?

19 A. No.

20 Q. Well, you filtered the phone running a report later for
21 Mr. Goel and Mr. Nirajan?

22 A. Yes.

23 Q. And that filtered report is a subset of the 497,700
24 messages?

25 A. Yes.

N6DQgqe4

Tappeto - Cross

1 Q. And each line is like a message, right?

2 A. Yes.

3 Q. So let me see. Just so it's clear in my mind, there's
4 497,700 chat messages between Mr. Niranjan and lots of other
5 people?

6 A. Yes.

7 Q. Some subset of that was between Mr. Goel and Mr. Niranjan?

8 A. Yes.

9 Q. Those are the ones you pulled, correct?

10 A. No.

11 Q. Those are the ones you put on a report?

12 A. They were included in the report.

13 Q. They were included in the report. Those are the ones on
14 Government Exhibit for identification -- and I'll get this
15 right with all the numbers flying around -- but that was on
16 Government Exhibit 253 for identification?

17 A. Yes.

18 Q. But we don't know how many. You don't remember the total
19 number?

20 A. No.

21 Q. Now, after the phone on June 2 was returned to
22 Mr. Niranjan, you don't know what he did with the phone on
23 June 3, right?

24 A. No.

25 Q. Or June 4?

N6DQgoe4

Tappeto - Cross

1 A. No.

2 Q. In fact, if we could pull up a calendar --

3 MR. BRODSKY: Your Honor, I'd like to offer the
4 June -- may I approach, your Honor?

5 THE COURT: You may.

6 MR. BRODSKY: Let me show you what's marked as Defense
7 Exhibit 1246 for identification, Mr. Tappeto.8 I will represent, your Honor, this is the month of
9 June 2022. We offer it in evidence.

10 THE COURT: Any objection?

11 MR. ROTHSCHILD: None, your Honor.

12 THE COURT: All right. Received.

13 (Defendant's Exhibit 1246 received in evidence)

14 MR. BRODSKY: May we publish, your Honor?

15 THE COURT: You may.

16 Q. So it was Thursday, June 2 when the phone was obtained from
17 Mr. Niranjan and then returned to him, correct?

18 A. Yes.

19 Q. And you weren't with him on June 3, on Friday, correct?

20 A. Correct.

21 Q. Or Saturday, June 4?

22 A. Correct.

23 Q. And we could say the same thing about June 5, June 6,
24 June 7, June 8 and June 9, correct?

25 A. Yes.

N6DQgqe4

Tappeto - Cross

1 Q. And you're not here to testify about anything Mr. Niranjan
2 did or did not do with his phone during those days?

3 A. Correct.

4 Q. So if on June 8 something happened on the phone, you did
5 not do a collection on June 8?

6 A. Correct.

7 Q. Now, there was a mention of signal messages in your direct
8 examination, so I wanted to ask you about that. Do I
9 understand correctly that at the direction of Mr. Niranjan, you
10 pulled two signal messages from the totality of signal messages
11 on Mr. Niranjan's phone on June 2?

12 A. Mr. Niranjan and counsel.

13 Q. And there were more than -- withdrawn.

14 Do I have this correctly that the method you used to
15 pull the data from the cellphone on June 2 did not include --
16 whatever that method was, did not include signal messages?

17 A. That's correct.

18 Q. Now signal messages are like an application on somebody's
19 phone, right?

20 A. Yes.

21 Q. And signal messages are communication from one person to
22 one or more people over this application?

23 A. Yes.

24 Q. And you can change the setting on signal to make messages
25 ephemeral or disappear?

N6DQgoe4

Tappeto - Cross

1 A. Yes.

2 Q. So if you and I had a signal -- if I had a signal app, a
3 signal application on my phone and you had one on yours, and I
4 communicated from me to you, I could set it to 30 minutes, and
5 it would disappear on your phone and my phone?

6 A. Yes.

7 Q. Okay. I could choose the time I wanted. I could do 30
8 minutes, I could do an hour, I could do two hours?

9 MR. ROTHSCHILD: Objection.

10 THE COURT: Overruled. That's a question.

11 A. There are specific time frames that you can set.

12 Q. Approximately how many signal messages were on
13 Mr. Niranjan's cellphone when you conducted your pull on
14 June 2, 2022?

15 A. I don't know.

16 Q. You did pull two at the direction of Mr. Niranjan and his
17 representatives?

18 A. Yes.

19 Q. That wasn't two you chose; that was just two that was
20 chosen by others?

21 A. Yes.

22 Q. Okay.

23 You also found that Mr. Niranjan had on his phone an
24 application called telegram?

25 A. Yes.

N6DQgoe4

Tappeto - Cross

1 Q. And telegram is like signal a messaging app where two or
2 more people can communicate with one another over the
3 application?

4 A. Yes.

5 Q. And telegram has features like disappearing messages?

6 A. Yes.

7 Q. Approximately how many messages did you pull from
8 Mr. Niranjan's phone on that telegram application on June 2?

9 A. None.

10 Q. How many signal messages did you pull from Mr. Niranjan's
11 phone on June 10?

12 A. None.

13 Q. How many telegram messages did you pull from Mr. Niranjan's
14 phone on June 10?

15 A. None.

16 Q. All right. I would like to turn now to the next day that
17 you -- am I understanding correctly after June 2, the next day
18 you met Mr. Niranjan was on June 10?

19 A. Yes.

20 Q. If we could pull up Government Exhibit 383 for a moment.

21 Now, can we blow up where -- and this is in evidence.

22 Mr. Niranjan turns over his same iPhone 11 Pro to you, correct?

23 A. Yes.

24 Q. Could we blow up the signature block of Mr. Niranjan and
25 Aditi Khullar, that whole block? Thank you. Would you

1 N6DQgoe4

2 Tappeto - Cross

3 highlight June 10, 2022 at the top, thank you.

4 The time that Mr. Niranjan turned over his phone to
5 you on June 10, 2022 was 2:06 p.m.?

6 A. Yes.

7 (Continued on next page)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6D6GOE5

Tappeto - Cross

1 CROSS-EXAMINATION

2 BY MR. BRODSKY:

3 Q. Now, you don't know where Mr. Niranjan was between, let's
4 say, approximately 7:00 a.m. and 7:45 a.m. that morning,
5 correct?

6 A. Correct.

7 Q. So keeping in mind the time of, let's say, 8:00 a.m., you
8 don't know where Mr. Niranjan was between 8:00 a.m. on June 10,
9 2022, and 2:06 p.m.?

10 A. That's correct.

11 Q. You don't have any way of telling whether Mr. Niranjan did
12 anything with his phone between 8:00 a.m. and 2:06 p.m.?

13 A. That's correct.

14 Q. So you don't know when you pulled the extraction from the
15 phone on June 10, 2022, you don't know when any particular
16 message that's not on the phone that day was deleted between
17 June 2nd and June 10?

18 A. That's correct.

19 Q. Okay. So on June 10, 2022 -- and you don't question
20 Mr. Niranjan -- I don't want to know the answer. You don't
21 question him about what he was doing between the hours of
22 8:00 a.m. and 2:06 p.m.?

23 A. No.

24 Q. Okay.

25 MR. BRODSKY: Your Honor, may I approach again?

N6D6GOE5

Tappeto - Cross

1 THE COURT: You may.

2 BY MR. BRODSKY:

3 Q. I'm showing you what's marked as defense Exhibit 1249 for
4 identification.

5 Prior to coming to court today, Mr. Tappeto -- you
6 recognize this document, correct?

7 A. Yes.

8 (Pause)

9 THE COURT: You may continue.

10 MR. BRODSKY: I'll offer DX1249, your Honor.

11 THE COURT: Any objection?

12 MR. ROTHSCHILD: None, your Honor.

13 (Defendant's Exhibit 1249 received in evidence)

14 THE COURT: Proceed.

15 BY MR. BRODSKY:

16 Q. Before I put it up side by side with DX1248 in evidence,
17 DX1249 in evidence is, fair to say, a summary of the numerical
18 number of items which were taken from the phone, extracted from
19 the cellular phone of Mr. Niranjan on June 10, 2022?

20 A. Some of the data categories.

21 Q. And the reason you say some of the data categories is
22 because at the direction of Mr. Niranjan and his
23 representatives, you only pulled a subcategory of information
24 from Mr. Niranjan's cellular telephone on June 10?

25 A. No.

N6D6GOE5

Tappeto - Cross

1 Q. You only pulled the text messages?

2 A. No.

3 Q. You were able to collect all the items on the phone on June
4 10, 2022, but you limited the report that you created to just
5 text messages?

6 A. Yes.

7 Q. When you limited the report that you created on June 10,
8 2022, to just text messages, you did that at the direction of
9 Mr. Niranjan and his representatives?

10 A. Yes.

11 MR. BRODSKY: All right.

12 Nicolette, would you please put side by side DX1249
13 with -- in evidence with DX1248, please? We're testing your
14 screen skills.

15 BY MR. BRODSKY:

16 Q. Mr. Tappeto, here it seems to say on audio that there's
17 49 -- there we go.

18 Here -- by the way, under Defense Exhibit 1249, which
19 is the smaller chart, right, for June 10th, it says June 10th
20 data categories, that also has the category of deleted, right?

21 A. Yes.

22 Q. And just like defense Exhibit 1248 for June 2nd, the
23 category of deleted there just means that when you did this
24 collection and ran this report for text messages, only
25 recoverable deleted items would appear in that column?

N6D6GOE5

Tappeto - Cross

1 A. Yes.

2 Q. So if it was just like defense Exhibit 1248 for June 2nd,
3 it was unrecoverable deleted, it would not appear?

4 A. Yes.

5 Q. All right. And this report can't tell when a deletion
6 occurred, correct?

7 A. Correct.

8 Q. And it doesn't purport or represent when something was
9 deleted?

10 A. Correct.

11 Q. All right. The June 2nd data category for audio, for
12 example, says 512. The June 10 data category for audio says
13 49. Do you see the difference?

14 A. Yes.

15 Q. Do you know whether or not audio from text messages were
16 deleted from the audio of text messages on defense Exhibit 1248
17 on June 2nd?18 MR. ROTHSCHILD: Objection, your Honor, can we have a
19 sidebar?

20 THE COURT: Let me look for a second.

21 Yes.

22 Ladies and gentlemen, please stand up and stretch.

23 (Continued on next page)

N6D6GOE5

Tappeto - Cross

1 (At the sidebar)

2 MR. ROTHSCHILD: Your Honor, it seems that the defense
3 is pursuing on cross-examination precisely the sort of
4 comparison between June 2nd and June 10 data that they asserted
5 would be expert testimony and that we agreed we would not
6 pursue with this witness on direct, and did not pursue with
7 this witness on direct. It's beyond the scope of the direct
8 and precluded by the Court's prior rulings on that issue.

9 THE COURT: Well, I'm giving the defense a certain
10 degree of latitude because of the circumstances by which
11 Mr. Tappeto comes to the stand which have been discussed on the
12 record of Monday morning's proceedings.

13 What I haven't yet ruled on is whether the questioning
14 in any way opens a door that was previously closed to you.

15 MR. BRODSKY: Your Honor, may I just --

16 THE COURT: So the objection is overruled.

17 MR. BRODSKY: May I just say that the government
18 elicited on direct that -- and Mr. Tappeto said, and it's
19 already out, that messages were obtained on June 10 that were
20 not on June 2nd. Then the next question was about a
21 discrepancy report and I object -- that's my memory. I could
22 be wrong. But that's my general recollection. Now I am
23 getting older.

24 THE COURT: No, no, no.

25 MR. BRODSKY: My memory could be wrong.

N6D6GOE5

Tappeto - Cross

1 THE COURT: And I have no way present, without
2 reviewing the transcript, to confirm or not your recollection.
3 But I --

4 MR. ROTHSCHILD: So, your Honor, I think the word
5 "discrepancy" was used to refer to the fact that Government
6 Exhibit 254, which is messages from June 10 of 2022,
7 includes -- this was in our letter -- 12 rows that are not on
8 the June 10 report when he filters it for conversations between
9 Brijesh Goel and Akshay Niranjan because there are 12 messages
10 between Akshay Niranjan and an individual whose last name is
11 Goel but is a different Goel.

12 That's why the word "discrepancy" came up. He was
13 preparing to explain that fact. It was only with respect to
14 June 10. There was no comparison between June 2nd and June 10
15 implied in that testimony at all.

16 MR. BRODSKY: Thank you for that. What I would say,
17 your Honor, to opening the door, is I would ask you to consider
18 that the challenge we have is that I want to be able to
19 understand why the numbers are different without opening the
20 door. This is the only witness who extracted the phone on
21 those two dates. And I don't want to open doors. But I
22 would -- would the Court have some guidance on whether this
23 line of questioning would open the door.

24 THE COURT: I really can't give you guidance, but it's
25 a general principle of trial practice that something which is

156D6GOE5

Tappeto - Cross

1 precluded, as was acknowledged to be precluded on direct
2 examination, by reason of the nature of the cross, the door can
3 be opened. And that is something that I know, as an excellent
4 trial lawyer of the first order, that you are mindful of and
5 you have two wise colleagues there to guide you.

6 MR. BRODSKY: I have two comments: One, I'm going to
7 take that part of the transcript and send it to my mother. And
8 the second part I would say is that, as of now, we have not
9 opened the door. Is that fair?

10 THE COURT: I haven't ruled on that. I haven't ruled
11 on it. It may be open already. But the fact of the matter is,
12 I'm going to give both sides an opportunity to argue that
13 point, and so I'm not ruling in realtime on that question.

14 MR. BRODSKY: Okay. Thank you, your Honor.

15 THE COURT: You don't have to thank me.

16 MR. BRODSKY: I understand.

17 (Continued on next page)

18

19

20

21

22

23

24

25

N6D6GOE5

Tappeto - Redirect

1 (In open court)

2 BY MR. BRODSKY:

3 Q. Mr. Tappeto, when you testified about a subset of messages
4 taken from, I think it was Government Exhibit -- just so I have
5 it right -- 255, do you recall approximately how many messages
6 are on Government Exhibit 255?

7 A. No.

8 Q. And, again, you didn't choose that subset, correct?

9 A. Correct.

10 Q. Do you know what years those messages are from?

11 A. No.

12 Q. What you know about them is that that group of messages was
13 selected by somebody else?

14 A. Yes.

15 Q. Who told you which messages to pull?

16 A. Could you repeat that? Or rephrase?

17 Q. Yes. I'll withdraw that question. I'll ask a better one.

18 Government Exhibit 255 in evidence, who selected those
19 messages?

20 A. I don't know.

21 MR. BRODSKY: One moment, your Honor. Thank you, your
22 Honor, no further questions.

23 THE COURT: Thank you, you may redirect.

24 REDIRECT EXAMINATION

N6D6GOE5

Tappeto - Redirect

1 BY MR. ROTHSCHILD:

2 Q. Mr. Tappeto, do you recall being asked questions on
3 cross-examination about who TransPerfect's client was for the
4 work you had been testifying about?

5 A. Yes.

6 Q. Did the identity of TransPerfect's client impact the work
7 that you did in any way?

8 A. No.

9 Q. Impact how carefully you did your work?

10 A. No.

11 Q. And do you recall being asked questions on
12 cross-examination about who was paying the bills for the work
13 that you were doing?

14 A. Yes.

15 Q. Did the identity of the person who was paying the bills
16 enter into your thought process at any point while you were
17 performing your work?

18 A. No.

19 Q. Did it impact the quality of your work?

20 A. No.

21 Q. Do you remember being shown the statement of work on
22 cross-examination?

23 A. Yes.

24 Q. Is that a document that you participated in creating?

25 A. No.

N6D6GOE5

Tappeto - Redirect

1 Q. Is your signature on that document?

2 A. No.

3 Q. Do you set the rates that are charged for your services?

4 A. No.

5 Q. And, in fact, did the identity of the client or the amount
6 that TransPerfect was getting paid at all impact your ability
7 to take your June 2, 2022, messages report and take Government
8 Exhibit 253 and satisfy yourself that the data on Government
9 Exhibit 253 is a subset of the data on your June 2, 2022,
10 messages report?

11 A. No.

12 Q. And it's a subset that includes messages between Akshay
13 Niranjan and Brijesh Goel?

14 A. Yes.

15 Q. Did it at all impact your ability to take your June 10,
16 2022, report, and Government Exhibit 254 and satisfy yourself
17 that the data on Government Exhibit 254 is a subset of the data
18 on your June 10, 2022, messages report?

19 A. No.

20 Q. And a subset that includes messages between Akshay Niranjan
21 and Brijesh Goel?

22 A. Yes.

23 Q. Is it at all unusual for TransPerfect to be hired by law
24 firms?

25 A. No.

N6D6GOE5

Tappeto - Redirect

1 MR. BRODSKY: Objection.

2 THE COURT: Overruled.

3 BY MR. ROTHSCHILD:

4 Q. Do you recall being asked questions on cross-examination
5 about work that you did in this matter after June of 2022, in
6 November of 2022?

7 A. Yes.

8 Q. And in February of 2023?

9 A. Yes.

10 Q. And did that subsequent work at all impact the work that
11 you had already done in June of 2022?

12 A. No.

13 Q. If we can pull back up Defense Exhibit 1248?

14 Mr. Tappeto, you testified that the deleted column
15 here -- what does it signify?

16 A. The deleted column would be a number other than one if a
17 deleted item was able to be recovered by our forensic tool.

18 Q. But it doesn't necessarily tell you if files had been
19 deleted from the device prior to your getting the device on
20 June 2nd?

21 A. No.

22 Q. And do you see on this document, sir, next to videos the
23 count says 4,415?

24 A. Yes.

25 Q. And what does that number signify?

N6D6GOE5

Tappeto - Redirect

1 A. That means there are 4,415 videos stored on the phone.

2 Q. And could we pull up Defense Exhibit 1249?

3 Mr. Tappeto, do you see videos here?

4 A. Yes.

5 Q. Now, what does videos on this spreadsheet refer to?

6 A. These are videos that were sent as attachments to messages.

7 Q. So different from what videos refer to on the other one?

8 A. Yes.

9 Q. What's the number here?

10 A. 1,023.

11 THE COURT: So that 1,000 number on DX1249 are videos
12 that were an attachment to something else, is that what your
13 testimony is?

14 THE WITNESS: Yeah. An attachment to a text message.

15 THE COURT: All right. And the 4,000 figure on the
16 prior exhibit, DX1248, that was not attachments. That was
17 videos on the phone, is that your testimony?

18 THE WITNESS: That will include attachments, it's all
19 videos stored.

20 THE COURT: All videos both attachments and those that
21 are just stored on the phone.

22 THE WITNESS: Correct.

23 THE COURT: Just trying to understand this. Thank
24 you.

25 MR. ROTHSCHILD: Thank you, your Honor.

N6D6GOE5

1 BY MR. ROTHSCHILD:

2 Q. Again, with respect to government -- Defense Exhibit 1249
3 that's up on the screen right now, deleted does not necessarily
4 tell you if there was data or messages deleted from the phone
5 prior to your encountering the phone on June 10, 2022?

6 A. That's correct.

7 MR. ROTHSCHILD: Your Honor, may I approach?

8 THE COURT: You may.

9 MR. ROTHSCHILD: Nothing further, your Honor.

10 THE COURT: All right. You may step down, sir. Thank
11 you.

12 (Witness excused)

13 THE COURT: Ladies and gentlemen, let's take our
14 midafternoon break. Please do not discuss the case among
15 yourselves or with anyone else. We'll be back in action in ten
16 minutes, and there's more to come. Please keep an open mind.
17 Thanks.

18

19

20

21

22

23

24

25

N6D6GOE5

1 (Jury not present)

2 THE COURT: See you in ten minutes. Thank you.

3 (Recess)

4 THE COURT: All right. Please remain standing for the
5 jury.

6 Get your next witness.

7 MR. NAFTALIS: While we're getting the jury, we see no
8 reason to inquire with respect to Court Exhibit 2, the note.

9 THE COURT: Okay. Fine, thank you.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6D6GOE5

Carocci - Direct

1 (Jury present)

2 THE COURT: Please be seated.

3 THOMAS CAROCCI,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q. Good afternoon. What do you do for a living?

9 A. I'm an attorney with FINRA. The financial industry
10 regulatory authority.

11 Q. What is FINRA?

12 A. Right. FINRA is what's called a private self-regulatory
13 organization. So we regulate the securities industry. That
14 would be firms and individuals that sell securities such as
15 stocks and bonds to the investing public. And we're funded by
16 that industry. It's a self-regulatory body, so we're not the
17 government.18 Q. You said you were an attorney at FINRA. What is your
19 position?20 A. I'm an assistant general counsel with the criminal
21 prosecution assistance group.22 Q. What does it mean to be an assistant general counsel in
23 that group?24 A. Right. So we assist federal, state, and local prosecutors
25 and investigators with their white-collar criminal cases. I do

N6D6GOE5

Carocci - Direct

1 not work on any FINRA civil regulatory matters. I just do
2 criminal assistance.

3 Q. How long have you been doing that criminal assistance work?

4 A. Approximately 19, 20 years.

5 Q. In the course of that work, have you previously testified?

6 A. I have.

7 Q. Any ballpark sense of how many times?

8 A. 75, 80 times perhaps.

9 Q. What sorts of cases?

10 A. Insider trading, stock manipulation, Ponzi schemes, some
11 money laundering, accounting fraud, options backdating frauds,
12 those types of trials. White-collar criminal trials.

13 Q. In the course of that work, have you encountered terms and
14 concepts that come up in the securities industry?

15 A. I have.

16 Q. Have you testified about those topics in the past?

17 A. I have.

18 Q. I want to turn your attention slightly and focus on a
19 regulatory piece of FINRA.

20 Does FINRA maintain records about those who have
21 licenses issued within the securities regulatory industry?

22 A. We do. We maintain a record of every individual in the
23 industry.

24 Q. I want to show the witness and the parties Government
25 Exhibit 361.

N6D6GOE5

Carocci - Direct

1 Do you recognize Government Exhibit 361?

2 A. I do.

3 Q. What do you recognize it to be?

4 A. It is a FINRA CRD, or central registration depository
5 report. So this would be a FINRA business record.

6 Q. Is this record kept in the regular course of FINRA's
7 business?

8 A. Yes, it is.

9 Q. Is this an accurate copy of one such report?

10 A. Yes.

11 MR. THOMAS: The government offers 361.

12 MR. FORD: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 361 received in evidence)

15 MR. THOMAS: Ms. Sonderby, if we can page forward to
16 Page 6, please.

17 BY MR. THOMAS:

18 Q. Mr. Carocci -- I think we've gone too far, Ms. Sonderby.
19 Can we go back one more page, please?

20 Mr. Carocci, do you see at the top of this Page 5 of
21 Government Exhibit 361 the name of the individual to which this
22 report relates?

23 A. Yes, Brijesh Goel, and then his CRD number, which is his
24 FINRA social security number, for lack of a better word.
25 618-7078, and Brijesh Goel. So this would be his individual

N6D6GOE5

Carocci - Direct

1 report with FINRA.

2 Q. Now this is before the jury, can you explain what sort of
3 information can be found in a CRD report like this?

4 A. It's a way FINRA keeps track of individuals in the
5 industry, what firms they are currently working with, what
6 exams they have passed which would allow them to do certain
7 things within the securities industry, their previous
8 employment background, educational background, and what firms
9 they are with. So it's kind of just identifying information
10 like that.

11 MR. THOMAS: Ms. Sonderby, if we can go forward to
12 Page 6, this time?

13 BY MR. THOMAS:

14 Q. I want to direct your attention, Mr. Carocci, to the center
15 of the page. There's an office of employment history section.
16 Do you see that?

17 A. Yes.

18 Q. What information could be learned in this part of the
19 document?

20 A. That Mr. Goel was employed with Goldman Sachs from April of
21 2013 till June of 2021.

22 MR. THOMAS: Ms. Sonderby, if you take off the -- and
23 go to the bottom of the page, please?

24 BY MR. THOMAS:

25 Q. Mr. Carocci, do you see the section labeled exam history?

N6D6GOE5

Carocci - Direct

1 A. Yes.

2 Q. What kind of information can be found in the exam history
3 part of the document?

4 A. This states what exams individuals have passed that FINRA
5 administers. FINRA administers exams which, if you pass,
6 you're allowed to do certain things in the industry. And so
7 this individual, Mr. Goel passed a Series 63, and on the next
8 page a Series 79.

9 Q. Let's start with the Series 63. You said it's on this
10 page?

11 A. Yes.

12 Q. Where can a jury see that he passed the Series 63 exam?

13 A. Under grade, it says "passed" and then the exam date was
14 7/27 of 2016.

15 Q. And in the exam column, is that indicated by the S63?

16 A. Yes, that stands for Series 63.

17 MR. THOMAS: Ms. Sonderby, if you can go to the top of
18 the next page, Page 7.

19 BY MR. THOMAS:

20 Q. Mr. Carocci, to direct your attention to the exam history
21 on this page, do you see S79 under exam on this page?

22 A. Yes.

23 Q. What does that signify?

24 A. The Series 79, which is an investment banking
25 representative exam. And Mr. Goel passed that, as you can see

N6D6GOE5

Carocci - Direct

1 under "grade" on May 2nd of 2016.

2 Q. In connection with these exams, does FINRA prepare and
3 publish exam outlines setting forth the content of the matter
4 that will be tested on the exam?

5 A. We do, yes.

6 Q. Is that true of the Series 63?

7 A. Yes.

8 Q. Is that also true of the Series 79?

9 A. Yes.

10 MR. THOMAS: Ms. Sonderby, just show the witness and
11 the parties Government Exhibit 362.

12 BY MR. THOMAS:

13 Q. Do you recognize Government Exhibit 362?

14 A. Yes, this is the investment banking representative content
15 outline, the Series 79 outline, content outline. And it was
16 from 2015, so it was in effect in 2016 when Mr. Goel passed the
17 exam.

18 Q. Is this a fair and accurate copy of what FINRA published
19 that was in effect at the time Mr. Goel took his exam?

20 A. Yes.

21 MR. THOMAS: The government offers 362.

22 MR. FORD: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 362 received in evidence)

N6D6GOE5

Carocci - Direct

1 MR. THOMAS: Ms. Sonderby, if we can publish for the
2 jury?

3 BY MR. THOMAS:

4 Q. So, Mr. Carocci, can you just explain at a high level to
5 the jury what this document is?

6 A. Right. So this would let an individual who is taking the
7 exam now know what is going to be tested on the exam; the
8 rules, the regulations, the products, the procedures that would
9 be tested on the exam so that they can prepare for the exam and
10 hopefully pass the exam when they take it.

11 MR. THOMAS: Ms. Sonderby, let's skip ahead to Page 24
12 of this document.

13 And if you could enlarge the Section 4.2.2?

14 BY MR. THOMAS:

15 Q. Mr. Carocci, what do we see here in this enlarged portion?

16 A. Section 4.2.2, it's insider trading and information
17 barriers.

18 Q. Is this information that would have been covered by this
19 exam?

20 A. That's correct. It's in the content outline. The exam
21 would have tested an individual's knowledge of those areas.
22 The rules and regulations and laws in those areas.

23 Q. What competence, if any, with respect to the rules and
24 regulations in this area would a test taker have to demonstrate
25 to pass the exam?

N6D6GOE5

Carocci - Direct

1 A. Well, that they understood insider trading and securities
2 fraud enforcement, that Rule 10b-5-1, trading on the basis of
3 material nonpublic information in insider trading cases.

4 Employment of manipulative and deceptive devices, it's 10b-5.
5 And then, you know, Section 15F, written procedures designed to
6 prevent misuse of material nonpublic information. And 155 --
7 10b-5-2, duties of trust or confidence in misappropriation of
8 insider trading cases.

9 MR. THOMAS: Ms. Sonderby, we can take that down.

10 Let's show the witness and the parties Government Exhibit 363.

11 BY MR. THOMAS:

12 Q. Mr. Carocci, we talked about the Series 79. You mentioned
13 earlier there was also a Series 63?

14 A. Correct.

15 Q. With that in mind, do you recognize the document in front
16 of you here?

17 A. Yes. It's the content outline for the Uniform State Law
18 examination, which is known as the Series 63 exam.

19 Q. And is this the content outline that was in effect at the
20 time Mr. Goel took this exam?

21 A. Yes, it was effective 11 of 2010, but it was still in
22 effect in 2016 when he took the exam.

23 MR. THOMAS: The government offers 363.

24 MR. FORD: No objection.

25 THE COURT: Received.

N6D6GOE5

Carocci - Direct

1 (Government's Exhibit 363 received in evidence)

2 MR. THOMAS: Ms. Sonderby, if you could publish that
3 for the jury and go to Page 2?

4 BY MR. THOMAS:

5 Q. Mr. Carocci, do you see there's a Section D labeled
6 "Conflicts of Interest and Other Fiduciary Issues"?

7 A. Yes.

8 Q. Was insider trading one of the topics covered in this exam?

9 A. It was. D6, insider trading is part of this content
10 outline, would have been tested on the Series 63 exam.

11 MR. THOMAS: Ms. Sonderby, you can take that down.

12 BY MR. THOMAS:

13 Q. Mr. Carocci, I want to talk to you a little bit about some
14 terms and concepts in the securities industry. Are you
15 familiar with the phrase "public company"?

16 A. Yes.

17 Q. What does it mean for a company to be a public company?

18 A. That would be a company that has a stock that trades on a
19 stock exchange. A company such as Apple or Amazon, Microsoft,
20 their stock trades on an exchange publicly and the public can
21 invest in that by buying and selling shares of those stocks.

22 Q. You mentioned stock exchange. Could you give the jury some
23 examples of stock exchanges?

24 A. So one would be the New York Stock Exchange here in
25 New York. The other would be the NASDAQ stock exchange. Those

N6D6GOE5

Carocci - Direct

would be two pretty big stock exchanges. So these publicly traded companies are listed on one of these exchanges and they trade on these exchanges. So the exchanges facilitate the buying and the selling from the investors.

Q. Are you familiar with the term "options" as it's used in the securities industry?

A. Yes.

Q. What is an option?

A. An option is basically a futures contract. So it's a contract to either purchase or sell shares at a future date at a predetermined price called a strike price. And you can buy a number of contracts. So if you buy five contracts, for example, it's generally each contract represents a hundred shares. So it's the right to buy or to sell 500 shares at some future date at a predetermined price.

Q. Mr. Carocci, I want to break that down to make sure that I get all the pieces there.

You mentioned strike price. Could you explain specifically what a strike price is?

A. Right. So that would be the price in the contract at which you can buy or sell securities. If you have what's called a call option, that gives you the right to buy securities in the future, stock in the future, at a predetermined price. That price being the strike price, whatever that strike price is in the option, in the contract.

N6D6GOE5

Carocci - Direct

1 Q. Are there other features to options contracts?

2 A. Yes, the expiration date, so there's a date at which it
3 expires. So it's either exercised, traded, or expired as of
4 that date. And you can do short-term or long-term, you can do
5 three months, six months, nine months, a year. Whatever you
6 want.

7 Q. So just, again, to make sure I follow along, if the
8 expiration date comes and goes, but the contract isn't
9 exercised, what happens then?

10 A. Well, you would lose what you paid to enter into that
11 contract if it just expires. And it will expire if it's out of
12 the money, if you don't trade it.

13 Q. You just used the phrase "out of the money"?

14 A. Mm-hmm.

15 Q. What does that mean?

16 A. For example, if you enter-- let's say you buy a call
17 option, five call options at a strike price of \$20, and the
18 stock, the stock that underlies that option, let's say it's
19 Amazon or something like that, is trading at \$15. Then that
20 option contract, that call option contract is out of the money
21 because you have the right to call it in at \$20, but it's only
22 currently trading at \$15.

23 So you can buy it in the open market on a stock
24 exchange such as the NASDAQ or the New York stock exchange for
25 \$15. So you wouldn't pay \$20 for it, you wouldn't call that

N6D6GOE5

Carocci - Direct

1 in. It would be out of the money, meaning, your option is not
2 profitable, therefore it would most likely expire, and you
3 would lose the cost of buying that options contract. It's
4 called a premium.

5 Q. Are you familiar with the phrase "in the money"?

6 A. Yes.

7 Q. What does it mean for an options contract to be in the
8 money?

9 A. So the same thing, if you had an options or call, you
10 purchased a call, bought a call with a strike price of \$20 per
11 share. And the stock, let's say, is now trading at \$25 a share
12 instead of 15. Now the stock is, or the option is in the money
13 because the stock is trading at \$25, higher than the strike
14 price, right? So you are able to call in, to buy, shares at
15 \$20 and they're currently selling in the open market at 25. So
16 you can buy them at 20, sell them in the open market at \$25 a
17 share, and make money. You make \$5 per share. And that's an
18 "in the money" call option. An example of one.

19 Q. In that example you explained you can call in the shares,
20 buy them at that price and then sell them on the open market?

21 A. Correct.

22 Q. Is there another way to make money within the money call
23 options?

24 A. Yes. Options trade like stocks. If you buy shares in
25 Apple, another investor is selling them to you. And the stock

N6D6GOE5

Carocci - Direct

1 exchanges facilitate that transaction. It's the same with
2 options contracts. They can be bought and sold between
3 investors. So if you have an option that's in the money,
4 it's -- it should be worth more than you paid for it if you
5 bought it -- let's say at the time you bought it was out of the
6 money. You should be able to -- you know, you should be able
7 to find a willing buyer for that options contract. So instead
8 of letting it expire or exercise, it's trading.

9 Q. From the perspective of investment strategy, what would
10 buying an out-of-the-money call option be intended to achieve?

11 A. It would -- if you bought an out-of-the-money call option,
12 that means that the strike price, the price at which you can
13 call those shares in, buy those shares, the contract gives you
14 the right to buy those shares, would be higher than what the
15 stock is currently trading at. Again, it would be like the
16 stocks trading at \$15, you have a call option with a stock --
17 with a strike price of \$20, out of the money.

18 You're -- an investor's thought there would be this
19 stock is going increase, right? It's going to increase to \$20
20 or higher. It's considered -- it's what they call a long
21 position or a bullish position. You think the stock that
22 underlies that options contract is going to increase in value
23 prior to the expiration date of the option.

24 Q. Now, we talked a little bit about the expiration dates.
25 Are you familiar with the phrase "short dated"?

N6D6GOE5

Carocci - Direct

1 A. Yes.

2 Q. What does it mean for an option to be short dated?

3 A. It's when the expiration date is relatively near or soon,
4 generally less than a year. Long dated would be generally over
5 a year or nine months or longer, something longer than a couple
6 weeks or a couple months.

7 Q. Mr. Carocci, I want to turn your attention to this matter
8 here. Did you assist in preparing and reviewing a series of
9 summary charts in preparation for your testimony today?

10 A. Yes.

11 Q. Can you tell the jury what sorts of records you relied on
12 to prepare your charts?

13 A. I looked at some brokerage account statements. These would
14 be statements that showed stock and options trading, similar to
15 a bank account statement, except instead of deposits and
16 withdrawals, it shows options, contracts and stocks being bought
17 and sold and money being deposited into accounts. Trade
18 blotters, which is the record that kind of firms keep to keep
19 track of -- brokerage firms to keep track of the trading.

20 I looked at publicly available, Bloomberg trading data
21 for the stocks. So what prices the stock traded at, how many
22 shares traded on a daily basis, the volume, what's called the
23 trading volume, how many shares traded on a daily basis. And
24 press releases. Trying to think if there's anything else.

25 Q. The press releases that you looked at, did those include

N6D6GOE5

Carocci - Direct

1 press releases that were appended to form 8-Ks filed by public
2 companies?

3 A. Yes.

4 Q. I want to take a couple of those categories of records one
5 at a time before we get to the charts. So let's start with the
6 account records.

7 MR. THOMAS: With the Court's permission, I'll read a
8 portion of a stipulation that bears on this issue?

9 THE COURT: All right.

10 MR. THOMAS: This is from --

11 THE COURT: Are you going to offer the stipulation or
12 is it in evidence?

13 MR. THOMAS: It's not in evidence, I intend to offer
14 the stipulation.

15 THE COURT: Why don't you offer it, offer the
16 stipulation.

17 Is there going to be any objection to this? This
18 is --

19 MR. THOMAS: This is Government Exhibit 503 which
20 relates to E-Trade and Optionshouse records.

21 MR. FORD: No objection.

22 THE COURT: Okay. Go ahead.

23 MR. THOMAS: From Government Exhibit 503, which I
24 think is now evidence:

25 Number 1. If called as a witness an employee of

N6D6GOE5

Carocci - Direct

1 E-Trade Financial Corporation would testify as follows:
2 Subparagraph A, Government Exhibits 300 through 303 reflects
3 trading records for the accounts of Akshat Niranjan at E-Trade
4 and Optionshouse, which was acquired by E-Trade. The
5 timestamp, column S in Government Exhibit 300 is in New York
6 time.

7 Subparagraph C, the records reflected in Government
8 Exhibits 300 through 307 were retrieved from E-Trade's files,
9 were created by a person with knowledge of, or created from
10 information transmitted by, a person with knowledge of the
11 information shown, or created at or near the time the
12 information became available to E-Trade, and were created and
13 maintained by E-Trade as part of its regularly conducted
14 activities.

15 The government offers Government Exhibits 300 through
16 303 on the basis of the stipulation.

17 THE COURT: Any objection to the exhibits?

18 MR. FORD: No objection.

19 THE COURT: Received.

20 (Government's Exhibits 300 through 303 received in
21 evidence)

22 BY MR. THOMAS:

23 Q. Now just to show the jury what you have in mind when you
24 talk about account records, can we show the witness Government
25 Exhibit 301, which is now in evidence?

N6D6GOE5

Carocci - Direct

1 Mr. Carocci, now that the jury can see Government
2 Exhibit 301, can you tell us what we're looking at here?

3 A. Right, this is an E-Trade account statement for
4 Mr. Niranjan. This particular page is the first page of the
5 January 1st -- January 2018 monthly brokerage account
6 statement.

7 Q. What kind of information can you find in a brokerage
8 account statement like this?

9 A. So it would show the trades for that month, the buy and the
10 sells, the positions, the current positions, meaning, the
11 current holdings of stock or options contracts in the account.
12 Deposits, withdrawals from the accounts, that type of stuff.

13 Q. Now, you mentioned earlier -- Ms. Sonderby, we can take
14 this down -- that you also relied on data from Bloomberg?

15 A. Yes.

16 Q. Let's show the witness and the parties Government Exhibit
17 364. Do you see Government Exhibit 364?

18 A. Yes.

19 Q. And let's show the witness and the parties Government
20 Exhibit 366.

21 Have you had a chance to review 366?

22 A. Yes.

23 Q. And show Government Exhibit 368.

24 Have you had a chance to review that?

25 A. Yes.

N6D6GOE5

Carocci - Direct

1 Q. Are each of these exhibits, Governments Exhibits 364, 366,
2 and 368, outputs from Bloomberg's price volume market reports?

3 A. Yes, it's Bloomberg data that's on Bloomberg.

4 Q. This is publicly available market quotations?

5 A. Correct, right. It's the closing price for the
6 corresponding date and the trade volume. Back when there were
7 newspapers, it used to be reported in every newspaper every
8 day.

9 Q. Mr. Carocci, did you yourself compare that the data
10 reflected on 364, 366, and 368 accurately reflected what is
11 available publicly in Bloomberg?

12 A. Yes.

13 MR. THOMAS: The government offers 364, 366, 368.

14 MR. FORD: No objection.

15 THE COURT: Received.

16 (Government's Exhibits 364, 366, and 368 received in
17 evidence)

18 BY MR. THOMAS:

19 Q. Now, we have 368 up, so let's leave 368 up and show it to
20 the jury.

21 Mr. Carocci, now that the jury is with us, can you
22 explain what kinds of information can be found in this sort of
23 Bloomberg data?

24 A. Right. So this is for Patheon NV. It's the price and
25 volume data for April 3, 2017, through May 31st of 2017. So

N6D6GOE5

Carocci - Direct

1 for each date, there's a closing price, which is the price at
2 4:00 o'clock Eastern, when the New York Stock Exchange and
3 NASDAQ closed. The last sale is the closing price, and that's
4 generally what's reported, like I said, in newspapers, all the
5 financial websites, that closing price. And then the daily
6 trading volume is how many shares exchanged hands.

7 So, again, this is for the stock, which is -- would
8 underlie like an options contract, if there's an options
9 contract on it. But this is for the stock, the ownership
10 interest in the company.

11 (Continued on next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6DQgoe6

Carocci - Direct

1 BY MR. THOMAS: (Continued)

2 Q. You talk about options contracts.

3 So, Ms. Sonderby, why don't we take this down and show
4 the witness and the parties only Government Exhibit 365.

5 Do you recognize 365?

6 A. Yes.

7 Q. Is this Bloomberg data for options contracts for a specific
8 ticker?9 A. Yes. This is for Calgon Carbon Corporation, and it is the
10 call options data for the corresponding date. It has the date,
11 the price and the volume.

12 MR. THOMAS: The government offers 365.

13 THE COURT: Any objection?

14 MR. FORD: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 365 received in evidence)

17 Q. Mr. Carocci, could you tell the jury what sort of
18 information can be found on this record?19 A. Right. It has the date and then the price of the options
20 contract. So if you look at September 6 of 2017, the price is
21 30 cents the contract, and the volume is 394 contracts.22 Q. Mr. Carocci, I want to direct your attention to the header
23 row here where it says 10/20/17, \$15 call options?

24 A. Correct.

25 Q. Can you explain to the jury what that is?

N6DQg0e6

Carocci - Direct

1 A. Yes. So that is a description of the call options. The
2 expiration date is 10/20/17. So that's first, right. And you
3 can see that options were bought on 9/6, September 6,
4 September 7, September 8, but they're all for 10/20/17
5 expiration at \$15 which is the strike price, \$15. And they're
6 call options, so it would give the option holder the right to
7 call in those shares at \$15 per share at, you know, prior to
8 October 20 of 2017.

9 Q. Mr. Carocci, in the price column, there are prices on some
10 of these days that are pennies, you know, portions of a dollar
11 or less. Is that common for options contracts?

12 A. Yes. You know, each contract is worth one hundred shares,
13 so that would be the -- it's just kind of the price per share.

14 Q. So the price here reflects the price per share?

15 A. That's correct.

16 Q. And what sorts of variables impact the price that an
17 options contract itself would trade at?

18 A. Well, whether it's whether in the money or out of the money
19 or close to the money, how close it is to the money would have
20 an effect on the price. And then, you know, what is happening
21 with the company, just like a stock, you know, if there's news
22 about the company, it could affect the options price as well,
23 both positively or negatively, depending on the nature of the
24 news.

25 Q. If a call option went from out of the money to in the

N6DQg0e6

Carocci - Direct

1 money, what effect, if any, would you expect there to be on the
2 call option price?

3 A. Well, that would generally -- investors would have seen
4 positive information about the company or something they
5 interpreted to be positive about the company because the price
6 would have increased, right? It would have increased from out
7 of the money to in the money. And we said an out of the money
8 stock option is when the strike price is higher than the
9 current trading price, so the stock price would have increased,
10 so the investors would have felt positively about the stock to
11 drive the price up.

12 Q. Mr. Carocci, we're looking here at Calgon Carbon call
13 options for a specific date range for a particular contract.
14 Did you obtain similar information for other tickers in this
15 case?

16 A. Yes.

17 Q. Show the witness and the parties only Government Exhibit
18 367.

19 A. Yes.

20 Q. Let's also show the witness and the parties Government
21 Exhibit 369.

22 A. Yes.

23 Q. Mr. Carocci, do Government Exhibits 367 and 369 also
24 contain publicly quoted Bloomberg price information for call
25 options with respect to particular tickers for a specified

N6DQg0e6

Carocci - Direct

1 time?

2 A. Yes.

3 MR. THOMAS: The government offers 367 and 369.

4 MR. FORD: No objection.

5 THE COURT: Received.

6 (Government's Exhibits 367 and 369 received in
7 evidence)8 Q. My colleagues were looking at me like I quoted the wrong
9 number, and hopefully we cleared it up. We can take this down,
10 Ms. Sonderby.

11 You also mentioned that you relied on press releases?

12 A. Yes.

13 Q. I think I had asked you if some of those press releases
14 were appended to something called a Form 8K?

15 A. Yes.

16 Q. Can you explain to the jury what a Form 8K is?

17 A. It's a Securities Exchange Commission form that public
18 companies file with the SEC, Securities Exchange Commission,
19 whenever there is a material event to investors, investors
20 might have interest in. And they file this 8K, and the SEC
21 puts that up on their website, which is called their Edgar
22 Database, and so it's widely distributed to the investing
23 public at the same time.24 Q. **Mr. Carocci, I want to turn now to the charts that you
25 prepared. On the desk in front of, you there should be a**

N6DQgoe6

Carocci - Direct

1 **binder. I would ask you to flip into the exhibits in that**
2 **binder and look at Government Exhibits 400, 401, 404, 405, 406,**
3 **407, 409, 410, 412, 413, 414 and 415. Did you find those**
4 **exhibits, sir?**

5 A. I did.

6 Q. Are those copies of the charts that you prepared and
7 assisted in preparing?

8 A. Yes.

9 Q. Are each of those charts fair and accurate to your
10 knowledge based on the underlying information?

11 A. Yes.

12 Q. Would they assist you in testifying today?

13 A. Yes.

14 MR. THOMAS: The government offers Exhibits 400, 401,
15 404, 405, 406, 407, 409, 410, 412, 413, 414 and 415.

16 MR. FORD: We have no objection to the numbers up to
17 414, but can we be heard on 415?

18 THE COURT: All right. Let me see you at sidebar.

19 (Continued on next page)

N6DQg0e6

Carocci - Direct

1 (At the sidebar)

2 THE COURT: I'm happy to hear the objection. I'm just
3 going to recommend to both sides that if you anticipate an
4 objection to an exhibit you expect to be offered, that you flag
5 it to me before court or on a break or the like.

6 But go right ahead.

7 MR. FORD: Thank you, your Honor.

8 The issue with 415 which deals with trades in Sprint
9 Corporation in our bill of particulars, as your Honor knows, we
10 asked for and received the particular trades that the
11 government alleged were going to be at issue in this case, and
12 we were explicitly told that the trades were starting 4/5/2018.
13 This chart has trades from 10/25/17, suggesting that the
14 government is now adding in additional trades that they
15 previously represented would not be in.

16 THE COURT: Let's find out.

17 MR. THOMAS: Your Honor, we don't intend to argue
18 anything improper about the earlier trades. Mr. Carocci was
19 asked to summarize all the trading in Sprint. This is a
20 summary chart of the trading in Sprint.21 MR. FORD: As long as the government will make clear
22 there's no allegations of improper trading from --23 THE COURT: Well, they're not going to make an
24 allegation of improper trading, period.

25 MR. FORD: Okay.

N6DQgoe6

Carocci - Direct

1 THE COURT: And you can say they've never made an
2 allegation of improper trading as to these particular trades in
3 your summations.

4 MR. FORD: Very good. Thank you, Judge.

5 MR. NAFTALIS: Your Honor, I don't remember if it's in
6 our bill of particulars. I don't know if this is going to be
7 an issue with this witness.

8 MR. FORD: I have a copy of the bill of particulars at
9 the table.

10 THE COURT: Why does this have to be adjudicated now?

11 MR. FORD: It doesn't.

12 THE COURT: I think that's what Mr. Naftalis is
13 suggesting is that subject to confirmation against the bill of
14 particulars, they don't intend to argue that the trades you
15 referred to were improper trades.

16 MR. THOMAS: That's correct, your Honor. We intend to
17 adhere to the bill of particulars and to the letter that we
18 sent the Court. This is the only chart about Sprint that this
19 gentleman will offer.

20 THE COURT: I understand. Thank you.

21 MR. FORD: Thank you.

22 (Continued on next page)

N6DQgoe6

Carocci - Direct

1 (In open court)

2 THE COURT: You may continue.

3 MR. THOMAS: Thank you, your Honor.

4 BY MR. THOMAS:

5 Q. Mr. Carocci, before we get to anything visually
6 interesting, I wanted to start with some basic charts. In the
7 accounts that you looked at, did you find trading in a company
8 stock known as Lumos?

9 A. Yes.

10 Q. Could we show the witness, the parties and the jury
11 Government Exhibit 410.12 Could you orient us as to what we're looking at here
13 in Government Exhibit 410?14 A. This is a Lumos Network Corporation trading summary. Their
15 symbol is LMOS. The left hand column is the date that the
16 option contract was bought. You see transaction type is
17 options contract. Description is, again, the symbol LMOS
18 stands for Lumos Networks. The expiration date is April 21,
19 2017. Strike price is \$17.50. And the C means it's a call
20 option. And it was a buy in the Niranjan account. It was a
21 buy of 60 contracts at 20 cents a share for the purchase price
22 of \$1,224.09. So that would be the line. So then the rest of
23 the contracts are listed.24 Q. Just to take the first row here. It says February 14, '17,
25 and a description of a contract is April 21, 2017. I had asked

N6DQgoe6

Carocci - Direct

1 you earlier about short dated or long dated. Could you say
2 whether this contract is one or the other?

3 A. I would say short dated because it's -- it was bought on
4 February 14, 2017, and the expiration date is, you know, a
5 little over two months later, April 21 of 2017.

6 Q. If you go over to the quantity column, the quantity is 60?

7 A. Right.

8 Q. What's the significance of the quantity here?

9 A. That's the number of contracts. Each contract generally
10 represents a hundred shares. So it's 60 contracts.

11 Q. I've been asking you here about. Lumos did you find
12 trading in these accounts related to a company named
13 PharMerica?

14 A. Yes.

15 Q. Can we show the witness Government Exhibit 413 and actually
16 publish for everyone.

17 What are we looking at here, Mr. Carocci?

18 A. So this is the PharMerica trading summary. Their symbol is
19 PMC, and, again, on the far left-hand column, you have the
20 date. That's the date the options contract was bought in the
21 Niranjan account. Under description, if you look at the
22 description, it's PMC, which is PharMerica Corporation. The
23 expiration date is June 16, 2017. The strike price is \$30 per
24 share. And it is a call option. So it would give the
25 individual the right to call in shares, to buy shares. They

N6DQgoe6

Carocci - Direct

1 bought the call option, and the number of contracts was 22
2 contracts.

3 Q. Mr. Carocci, big picture, does Government Exhibit 413
4 summarize the trading in the accounts you looked at for
5 PharMerica Corporation securities?

6 A. Yes.

7 Q. Did you look in those accounts to see whether there was
8 also trading in the stock of a company named Patheon?

9 A. Yes.

10 Q. Can we show everyone Government Exhibit 412.

11 Mr. Carocci, does Government Exhibit 412 summarize the
12 trading in the accounts you looked at in the securities of
13 Patheon

14 A. Yes, it does.

15 Q. Just to make sure everyone can take away the full
16 significance of the chart, in the bottom row there's a total
17 row. Do you see that?

18 A. Yes.

19 Q. There's a red figure under amount purchased?

20 A. Yes.

21 Q. And a black figure under amount sold, and then a figure
22 labeled total P/L?

23 A. Right. So the amount purchased is the total amount that
24 was spent on buying options contracts, and the exercise of an
25 option contract in Patheon in the Nirajan accounts that

N6DQg0e6

Carocci - Direct

1 totaled \$272,840. And the amount that those contracts in
2 shares were sold for was \$304,653.03 for a total profit of
3 \$31,812.74. It's the amount purchased minus the amount sold
4 for the total profit. That's what was -- that's the summary of
5 the buys and sells of contracts and stock in Patheon.

6 Q. Did you look in the account to see whether there was
7 trading in the securities of Spirit?

8 A. Yes.

9 Q. Can we show everyone Government Exhibit 414.

10 Does 414 summarize the trading in the Niranjan account
11 in the securities of Spirit Airlines?

12 A. Yes, it does.

13 Q. Did you look in the account to see whether there was
14 trading in the securities of Sprint?

15 A. Yes.

16 MR. THOMAS: Your Honor, we offer now again Government
17 Exhibit 415 on the basis of the sidebar.

18 THE COURT: Any objection?

19 MR. FORD: No objection.

20 THE COURT: Thank you. Received.

21 (Government's Exhibit 415 received in evidence)

22 Q. We show the witness and the jury Government Exhibit 415.

23 Does 415 summarize the trading and secures of Sprint
24 corporation in the accounts you looked at?

25 A. Yes, it does.

N6DQg0e6

Carocci - Direct

1 Q. And did you look in the accounts to see whether there was
2 trading in Calgon Corporation?

3 A. Yes.

4 Q. Show everyone Government Exhibit 409.

5 Now, Mr. Carocci, again to draw your attention to
6 Government Exhibit 409, does this summarize the trading in
7 Calgon Carbon Corporation securities in the Niranjan account?

8 A. It does. It starts with the option contracts bought on
9 September 6, 2017, and it goes through the assignment of an
10 options contract on November 17 of 2017.

11 Q. Now, to look at the first row, September 6, 2017, the
12 description is CCC, October 20, 2017, \$15?

13 A. Correct. So it was an options contract in CCC. Expiration
14 date of October 20, 2017. Strike price of \$15. It was a call
15 option. And it was bought for the eleven contracts were bought
16 at 35 cents a share.

17 Q. Mr. Carocci, again, in your view, would this be a short
18 dated or a long dated call option?

19 A. It would be a short dated because it's a little over a
20 month.

21 Q. And with respect to Calgon Carbon trading, how much money
22 did the account use to purchase Calgon Carbon securities in
23 this time period?

24 A. About \$53,853.54 was the amount of the purchase of the
25 options contracts, and of the purchase of 2500 shares on the

N6DQgoe6

Carocci - Direct

1 exercise of one of those contracts.

2 Q. How much in proceeds was this account able to sell those
3 shares for on the market?

4 A. For \$300,200.16 for a profit of \$246,367.62.

5 Q. Now, Ms. Sonderby, we can take this down.

6 Mr. Carocci, I'm going to walk through a few visual
7 charts. Let's start with Government Exhibit 404. I want to
8 take you back to trading in Lumos. Mr. Carocci, could you
9 explain to the jury what we're looking at here on Government
10 Exhibit 404?

11 A. Yes. So this is Lumos Networks Corporation. It's a chart
12 that shows the daily closing price and the trade volume for
13 Lumos stock and the Niranjan trading in that stock from
14 February 1 through April 28 of 2017.

15 Q. Now, here there are -- there's a line in blue. Could you
16 tell the jury what that signifies?

17 A. So the line in blue is the closing price line. So that's
18 the price line. And if you look at the right hand axis, it's
19 the price axis. So for, you know, you know -- so, for example,
20 the -- you know, the price is trading a little over, it looks
21 like, \$15 a share on February 14, that black dot. So that
22 would be the price line, and the price goes up to approximately
23 \$18 per share and then higher across.

24 Q. There is a reddish salmon-colored set of bars along the
25 bottom. Could you tell the jury what those are?

N6DQg0e6

Carocci - Direct

1 A. That's the trading volume for the corresponding date at the
2 bottom of the chart, the horizontal axis on the bottom of the
3 chart, which is the same for price. That would be the daily
4 trading volume of the stock, how many shares traded hands of
5 Lumos stock.

6 Q. And you have annotations with dates along the graph. Could
7 you walk the jury through what you've annotated here?

8 A. Correct. So on February 14 of 2017, the Niranjan account
9 buys 120 contracts with an expiration date of April 21, 2017,
10 with a strike price of \$17.50, and they're call options. So
11 they have the right to call in those options at \$17.50 a share.

12 Now the stock is only trading at a little over \$15 a
13 share, not lower than \$17.50 a share, so those are out of the
14 money stock options, call options, out of the money call
15 options. So it's a long position. It's bullish. Someone that
16 would buy that would think the stock price is going to increase
17 in value to higher than \$17.50.

18 Q. Did that happen?

19 A. It did. It did happen. There was a -- on the same date
20 there was a corresponding sell of call options for the same
21 expiration date, April 21 of 2017 at \$25. So that is what's
22 called a bull spread call, basically. You know, we can get
23 into that, but the stock did increase to \$18 a share. It did
24 go higher than \$17.50 a share, so the options contract did go
25 into the money.

N6DQg0e6

Carocci - Direct

1 Q. I'm going to break this apart and make sure everyone
2 follows along.

3 On February 14, the Niranjan account made a bet that
4 the stock would go up

5 A. Higher than \$17.50.

6 Q. Higher than 17.50?

7 A. Right.

8 Q. Did that happen?

9 A. That happened, yes.

10 Q. How much longer after the initial stock trade on the 14th
11 did that occur?

12 A. About six days.

13 Q. Why did the stock go up?

14 A. The stock went up, on February 20, about six days later,
15 Lumos announced a \$950 million merger agreement with EQT at \$18
16 per share. So EQT made an offer for Lumos at \$18 a share.
17 Once that happened, the stock price went up from a little over
18 \$15 a share to close to \$17 a share.

19 And you can also see the spike in trading volume. The
20 trading volume was roughly -- on February 17 was roughly about
21 60,000 shares for the day. And then on February 20, which was
22 the next trading day -- that was President's Day weekend, so
23 there was no trading on that Monday, so it's three days -- was
24 6.4 million shares. So now the trading volume went from 60,000
25 to 6.4 million, and the stock price increased from around \$15 a

N6DQgoe6

Carocci - Direct

1 share to a little below \$18 a share.

2 Q. If I heard correctly, is it right that not only did the
3 stock price go up but many more people traded in the stock
4 around the time of that merger?

5 A. Correct. Correct. It was seen as positive news, as you
6 can imagine, because somebody is now offering \$18 per share for
7 a stock that's trading around \$15 a share. EQT offered \$18 a
8 share.

9 Q. And was the Niranjan account able to turn this trade into a
10 profit with respect to Lumos?

11 A. Yes, because the call options went from out of the money to
12 in the money because the stock price went over \$17.50 a share.

13 Q. Now earlier in discussing this chart, you mentioned the
14 phrase, bull call spread?

15 A. Yes.

16 Q. Could you explain what that means?

17 A. That's just a strategy where you buy a call in a stock, a
18 call option in a stock at the same time you sell a call option
19 on a stock, meaning you write a call option in a stock with the
20 same number of contracts. Here it was 120 contracts. And the
21 same expiration date. The expiration date here was 4/21/17.

22 It just has a higher strike price. The one that was sold is a
23 higher strike price of \$25. This allows you to reduce your
24 costs of buying the initial call option. You -- when you buy a
25 call option, you pay a premium. When you write a call option,

N6DQg0e6

Carocci - Direct

1 meaning sell a call option to somebody else, you receive a
2 premium, and so that generally can reduce your costs. And if
3 the stock price goes up and comes in the money, you can make
4 money on the spread between those two.

5 Q. I'm turning your attention to the trading in Patheon.

6 Let's show the jury Government Exhibit 406.

7 What are we looking at here on Government Exhibit 406?

8 A. Right. So it's the same type of chart. It's Patheon, the
9 daily closing price and trading volume from April 1 through
10 May 31 of 2017, and has trading in the Niranjan brokerage
11 accounts in options contracts.

12 Q. Once again, you've annotated the chart along the way.

13 Could you walk the jury through your annotations?

14 A. Yes.

15 So on April 25, the Niranjan account buys 75 contracts
16 with an expiration date of 5/19/2017, \$30 call options. Then
17 on May 3, the Niranjan account buys 20 contracts. 5/19
18 expiration, also \$30 call options. So they have a total of 95
19 contracts that expire on May 19, 2017 at \$30 -- a strike price
20 of \$30. These call options are currently -- when he bought
21 them currently out of the money, right? It's a strike price of
22 \$30, and you can see from the blue line that the stock is
23 trading a little over \$25 per share. So the strike price is
24 higher than the closing price, the price at which the stock is
25 trading at. Therefore, it's out of the money when the call

N6DQg0e6

Carocci - Direct

1 options are purchase

2 Q. If you continue to go forward, what happens on May 15 as
3 annotated in your chart?

4 A. Right. Then on May 15, Patheon announces a \$7.2 billion
5 merger agreement with Thermo Fisher Scientific at \$35 per
6 share. So at \$35 per share, that's above the exercise -- the
7 strike price of \$30 per share. So now the options increase in
8 value, and at \$35 a share, they'd be in the money. And the
9 Niranjan account sells five of the 95 contracts on May 15.

10 And then on May 19, the Niranjan account exercises 90,
11 the remaining 90 contracts are exercised, and they buy 9,000
12 shares because, remember, each contract is worth a hundred
13 shares, so there's 9,000 shares. He buys 9,000 shares at \$30
14 per share, and you immediately turn around and sell them at
15 what the stock is trading at, \$33.60 a share. So the profit is
16 approximately \$3.60 a share because he had the right under the
17 options contract to buy them at \$30, but it's trading at \$33,
18 \$35, so it's in the money. So he sells what he had the right
19 to buy and makes a profit of approximately \$3.60 a share times
20 the 9,000 shares.

21 Q. Mr. Carocci, if I understand you correctly, would it be
22 right that on April 25, the trade placed in the Niranjan
23 account effectively bet that the price would go up to \$30?

24 A. That's correct. As with the previous chart Lumos, there
25 were trades that are bullish. It is a bet that the stock price

N6DQgoe6

Carocci - Direct

1 will increase in value because they purchased out of the money
2 call options. So that is a bet that stock price will increase
3 prior to the expiration of May 19.

4 Q. Here the expiration was a matter of weeks from the date the
5 trade was placed?

6 A. That's correct. It was a matter of weeks, you know, before
7 the trade, and four days after the announcement of the merger
8 at \$35 per share. So it's similar to Lumos in that out of the
9 money call options were bought. Shortly thereafter, they
10 became in the money because of a merger announcement and became
11 profitable.

12 Q. Let's show the jury Government Exhibit 405. During this
13 time period, was there any change in the price of the options
14 contract itself?

15 A. Yes. So the option contracts that were the 75 that were
16 originally bought in the Niranjan account on April 25 were
17 approximately 32 cents a share. Then the ones on May 3, the 20
18 additional contracts that were purchased were at approximately
19 20 cents a share. So it went down between April 25 and May 3.

20 And then on 5/15, it increased dramatically because
21 there was an announcement that Thermo Fisher was buying Patheon
22 at approximately \$35 a share, which was much higher than what
23 the shares were trading at. So the call options increased from
24 approximately 32 cents, 20 cents a share to \$4.60 a share, a
25 22 percent increase between May 3 and May 15 of 2017.

N6DQg0e6

Carocci - Direct

1 Q. Ms. Sonderby, we can take that down. I want to show you
2 Government Exhibit 401. This can be published to the jury.

3 Mr. Carocci, what are we looking at here?

4 A. This is for the Calgon Carbon Corporation, the daily
5 closing price and trading volume August 1 through November 30,
6 2017 for the Niranjan account.

7 Q. Does this similarly show the price of Calgon Carbon equity
8 securities with the blue line?

9 A. Yes, so that is the closing price for their common stock.
10 You know, it's approximately \$12, \$13 a share when the Niranjan
11 account buys call options at \$15. But the blue line is the
12 stock price line, yes.

13 Q. And the reddish line again is the trading line in the
14 security?

15 A. Yes. And you can see the red line at the bottom is a daily
16 trading volume. You can see right before the merger
17 announcement, it increased from about 383,000 shares on
18 September 19 to 24 million shares on the day the merger was
19 announced.

20 Q. Once more you've annotated this chart. Could you walk the
21 jury through the annotations?

22 A. Yes. So on September 6, the Niranjan account buys 361
23 contracts that expire 10/20/2017 at a strike price of \$15. The
24 stock price that day is closing at approximately \$13 a share.
25 So the options are out of the money. The expectation is the

N6DQgoe6

Carocci - Direct

1 stock will increase in value. It's a bull. It's a long
2 position.

3 Then on September 11, the Niranjan account buys an
4 additional 29 contracts with the same expiration of October 20,
5 2017. The same strike price \$15 a share. And they're also
6 still out of the money because the stock is not trading at \$15
7 a share; it's trading below \$15 a share.

8 Then on September 19, the Niranjan account buys an
9 additional 25 contracts with 11/17/2017 expiration date.
10 Strike price of \$15. Still out of the money. And it also
11 sells a corresponding call option with the same expiration but
12 a higher strike price of \$20. That's what we're calling the
13 bull spread option, right, where they're minimizing -- they're
14 receiving a premium for selling that call option -- for writing
15 that call option, but they're limited to a \$20 gain because
16 of -- or \$5 a share gain, the 15 minus the 20 because they
17 would have to basically sell those 2,500 contracts at \$25.

18 Q. Mr. Carocci, why don't we break that apart a little bit.

19 A. Yes.

20 Q. Do I hear you correctly that it costs money to buy a call
21 option?

22 A. Correct. If you buy a call option, it costs money.

23 Q. But you are paid money to write a call option?

24 A. Correct.

25 Q. So what you were saying with respect to September 19

N6DQgoe6

Carocci - Direct

1 trading is that the Niranjan account both pays money to buy 25
2 \$15 call options. And is paid money to write these \$20 call
3 options?

4 A. Correct.

5 Q. Why, again, would somebody both buy and write options for
6 the same security?

7 A. Well, it can reduce your cost, right? Because you're
8 buying and then you're writing. So you're receiving -- you're
9 paying money, then receiving some money to offset the cost.
10 And the downside to that is you would not be able to profit
11 from a price increase over \$20 per share because you would have
12 to make good on that call option. If the price of the stock
13 you know, went above \$20 per share, that option would be called
14 in, and you would have to sell those shares to the individual
15 you wrote the option to.

16 Q. Here your chart annotates that Calgon Carbon announced a
17 merger on the 21st?

18 A. Correct.

19 Q. Did the market react to that news?

20 A. Yes, the stock price, you know, increased from
21 approximately \$13 a share to approximately \$21.40 per share,
22 almost a \$21.50 per share price. And the -- so when the stock
23 price went up, the options became in the money. The \$15 call
24 options he bought became in the money because it was trading
25 higher than \$15.

N6DQg0e6

Carocci - Direct

1 Q. Was the Niranjan account able to turn this trading into
2 profits?

3 A. It was. So it sold the 390 call options on September 21,
4 the day of the merger was announced, and then the additional 25
5 call options were exercised at a later date. The interesting
6 thing -- this is like the other ones, as far as out of the
7 money options, call options were purchased prior to the merger
8 announcement and became in the money after the merger
9 announcement.

10 The other thing about this one is when you look at
11 GX-301, which is the E*Trade account, the balance in the
12 E*Trade account on September 1 was about \$646.

13 On September 5, there was a \$15,000 wire into the
14 account. That \$15,000 was then used to buy the 361 contracts
15 on September 6 and the 29 additional contracts on September 11.

16 Then on September 19 or 20th, there was a \$5,000
17 deposit into the account. And the additional call options were
18 bought on the 19th.

19 So the beginning of the month there's \$646 account
20 balance in the account. \$20,000 deposited into the account.
21 Almost all that money is used to buy call options in CCC. It's
22 the only position in the account between September 5 and
23 September 21. There is no other stock held in the account.
24 There's no other options held on the account between
25 September 5 and September 21. There is one bet, and it's that

N6DQgoe6

Carocci - Direct

1 Calgon is bullish, long, it's going to go up in value. All the
2 money in the account is invested in that.

3 Q. Mr. Carocci, I want to turn your attention to Government
4 Exhibit 400.

5 A. Yes.

6 Q. Could you remind the jury what sort of information is
7 reflected on this kind of chart?

8 A. Yes. So this is the Calgon Corporation daily closing price
9 and trading volume for the 10/20/2017 call -- \$15 call options.

10 Q. What happens to the price of the Calgon Carbon call options
11 in the period here?

12 A. It increases from approximately 35 to 40 cents a share, 45
13 cents a share, which the Niranjan account is buying the call
14 options at, to approximately \$6.40 on the date that the merger
15 was announced September 21 of 2017, which was an increase of
16 approximately 1,500 percent.

17 Q. Mr. Carocci, did you have occasion to total up the profits
18 from the trading in the Lumos, Patheon and Calgon Carbon
19 securities?

20 A. Yes.

21 Q. Can we show the witness Government Exhibit 407?

22 What are we looking at here?

23 A. Just a profit analysis from the Niranjan accounts for these
24 three stocks: Lumos, Patheon and Calgon. The blue represents
25 the Calgon portion of the profits, approximately \$246,346.62.

N6DQgoe6

Carocci - Cross

1 The orange is the Patheon profits of \$31,812.74. And the small
2 gray area is the Lumos profits on the options contracts of
3 \$1,862.68.

4 MR. THOMAS: Nothing further, your Honor.

5 THE COURT: All right. Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. FORD:

8 Q. Good afternoon, Mr. Carocci.

9 A. Good afternoon.

10 Q. Adam Ford.

11 A. Nice to meet you.

12 Q. Can we pull up Government Exhibit 303 in evidence, please.

13 Mr. Carocci, this was the same account statement that
14 you were asked about on direct examination. Do you remember
15 that?

16 A. Yes.

17 Q. And I just want to be clear. The name on this account is
18 Akshat Niranjan. Is that correct?

19 A. Yes.

20 Q. And is it fair to say that -- you described -- strike that.

21 On direct examination, you testified that you examined
22 a series of trading account statements in connection with your
23 work, correct?

24 A. Yes.

25 Q. Is it fair to say that the name on each and every one of

N6DQg0e6

Carocci - Cross

1 those trading account statements was Akshat Nirajan?

2 A. Yes.

3 Q. There were no account statements that you reviewed in the
4 name much Akshay Nirajan, correct?

5 A. I don't believe so, no. I think they were all Akshat,
6 right, A-K-S-H-A-T?

7 Q. Yes.

8 And there were no account statements in the name of
9 Brijesh Goel. Isn't that correct?

10 A. That's correct.

11 Q. And you never saw any evidence on any of these trade
12 records that reflected Mr. Goel having any beneficial interest
13 in any of these accounts. Isn't that correct?

14 A. I didn't see the beneficial interest besides Mr. Nirajan.

15 Q. And to be clear, Akshat Nirajan?

16 A. Right, I believe that's right.

17 Q. Okay. And so just to be clear, for everything that you
18 just testified to where things are being referred to as the
19 Nirajan accounts, you were referring to Akshat Nirajan's
20 account, correct?

21 A. Yes.

22 Q. Now, let me take you to Government Exhibit 407 in evidence.

23 MR. FORD: I apologize, your Honor. I think with
24 might have a Wi-Fi issue. I'm told we're getting the circle.

25 Thank you for that.

N6DQgoe6

Carocci - Cross

1 Q. Mr. Carocci, this was a chart that the government showed
2 you, and I just want to be clear on something. You have up on
3 the upper right total profits of \$280,000. Do you see that?

4 A. Yes.

5 Q. To be clear, what you mean there is total gross profits.
6 Isn't that correct? Let's -- I'll withdraw it.

7 You examined six trades in connection with your work.
8 Isn't that correct?

9 A. Stocks or trades?

10 Q. I'm sorry, stock, stock symbols.

11 A. Symbols, I believe six, yes.

12 Q. These were the six you just testified to on direct
13 examination?

14 A. Yes. Mmm-hmm. Yes.

15 Q. In fact, three of those lost money. Isn't that correct?

16 A. That's correct.

17 Q. And then just to remind everyone, so those were the trades
18 in PharMerica, which is on Government Exhibit 413, and I will
19 represent to you, you had a \$13,460 loss. Do you see that?

20 A. Yes.

21 Q. I apologize. If we could pull up 413 as well. Sorry. So
22 everyone can follow along.

23 Do you see Government Exhibit 413?

24 A. Yes.

25 Q. This was the analysis you had done in PharMerica

N6DQgoe6

Carocci - Cross

1 Corporation, correct?

2 A. Yes.

3 Q. And the first trade in PharMerica corporation was May 10,
4 2017. Is that correct?

5 A. Yes.

6 Q. And the last trade in PharMerica was June 26, 2017. Is
7 that correct?

8 A. Yes.

9 Q. And at the end of the day, the trades that were placed in
10 Akshat Niranjan's account in PharMerica resulted in a \$13,460
11 loss. Is that correct?

12 A. Yes.

13 Q. Can we pull up Government Exhibit 415 in evidence?

14 Now, on this chart, the trading was from -- in Sprint
15 Corporation, there was some trading?

16 A. Yes. Mmm-hmm.

17 Q. Let me just direct your attention to the trade starting
18 April 5, 2018.

19 A. Okay.

20 Q. And they continue until September 7, 2017?

21 A. Yeah, this is the last stock sale. Yes.

22 Q. And the total for all of that was \$17,445?

23 A. The loss.

24 Q. Total loss.

25 A. Yes.

N6DQg0e6

Carocci - Cross

1 Q. All right. And now let me direct your attention to
2 Government Exhibit 414.

3 And the first trade in Spirit Airlines in Akshat
4 Niranjan's account was May 24, 2018. Do you see that?

5 A. Yes.

6 Q. And the last one was July 10, 2018?

7 A. Yes.

8 Q. So -- and that resulted in a \$278 loss?

9 A. Yes.

10 Q. Okay. So now -- so the total loss -- not going to test
11 your math. I'm fine with rough numbers, but from the three
12 series of trades we just looked at, there was a \$13,460 loss.
13 Remember that?

14 A. Yes.

15 Q. There was a \$17,445 loss, correct?

16 A. Yes.

17 Q. And \$278 loss. So is that?

18 A. Approximately \$31,000.

19 Q. About \$31,000 in loss?

20 A. Give or take.

21 Q. So now if we could go back to Government Exhibit 407.

22 On the upper right-hand column, you have total profit
23 of \$280,000 for the three trades you listed, correct?

24 A. Yes.

25 THE COURT: Stocks, you mean.

N6DQgoe6

Carocci - Cross

1 A. Stocks.

2 Q. I apologize. Stocks. Yes.

3 So if you were to add in the \$31,000 in losses, you'd
4 have a total profit of about \$250,000 in Akshat Niranjan's
5 trading account. Is that fair?

6 A. That's correct, about \$250,000 if you counted all six
7 stocks. This chart just relates to the three --

8 Q. Just the three. Yes. Which brings me to another thing,
9 because you have -- just so we're clear on this now that it's
10 in evidence, you say Niranjan accounts profit analysis for
11 Niranjan account September 2016 to September 2018, but just to
12 be clear, this is only in these three stocks, correct?

13 A. That's correct.

14 Q. You're aware that there was trading in these accounts in
15 other stocks. Is that correct?

16 A. That's correct.

17 Q. Okay. And just to be clear on that last point. The
18 Niranjan accounts, there was trading in stocks other than the
19 six stocks that we've been discussing here today?

20 A. I did see other trading, right.

21 (Continued on next page)

N6D6GOE7

Shah - Direct

1 BY MR. FORD: (Continued)

2 Q. But you did not do an analysis on any of these other
3 stocks; is that true?

4 A. No. I only did the analysis on the six I was asked to do.

5 MR. FORD: Okay. No further questions.

6 THE COURT: Redirect.

7 MR. THOMAS: No, your Honor. Nothing further.

8 THE COURT: You may step down.

9 (Witness excused)

10 THE COURT: Call your next witness.

11 MR. ROTHSCHILD: Government calls Nita Shah.

12 THE COURT: All right.

13 NITA SHAH,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 THE COURT: All right. You may inquire.

17 MR. ROTHSCHILD: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. ROTHSCHILD:

20 Q. Good afternoon, Ms. Shah.

21 A. Good afternoon.

22 Q. How old are you?

23 A. 71.

24 Q. Where were you born?

25 A. In Calcutta, India.

N6D6GOE7

Shah - Direct

1 Q. How far did you go in school?

2 A. I have a master's degree.

3 Q. In what?

4 A. In English literature, English literature.

5 Q. Where did you get your master's from?

6 A. From the University of Calcutta, India.

7 Q. When did you move to the United States, Ms. Shah?

8 A. Around '85.

9 Q. 1985?

10 A. Yes.

11 Q. What do you do for work?

12 A. I'm a translator and an interpreter.

13 Q. What languages are you a translator and an interpreter for?

14 A. Hindi, Gujarati, and Bengali.

15 Q. Around when did you start working as an interpreter and
16 translator in the United States?

17 A. Around 2000.

18 Q. When you started out, where were you working as an
19 interpreter and translator?

20 A. That time, I was working with various agencies and as a
21 freelancer, and also with the Department of Justice, Department
22 of Homeland Security, and a lot of private law firms.

23 Q. After working as a freelancer, what did you do next?

24 A. I had various jobs, including working as a case manager
25 with FEGS, FEGS, as well as the Children's Aid Society. And

N6D6GOE7

Shah - Direct

1 eventually in 2012, from 2012 to 2018, I worked with the
2 Department of Homeland Security, immigration -- immigration
3 services.

4 Q. When you say you worked for the Department of Homeland
5 Security, you mean as an interpreter and translator?

6 A. Yes.

7 Q. After working as an interpreter and translator for the
8 Department of Homeland Security, what did you do next?

9 A. I retired, so I'm just freelancing now. But most of those
10 agencies.

11 Q. Freelancing as an interpreter and translator?

12 A. Yes.

13 Q. And what sorts of organizations do you provide
14 interpretation and translation services for?

15 A. Pretty much the same, like the Department of Justice and
16 Homeland Security and other private agencies.

17 Q. Are you a court-approved interpreter and translator?

18 A. Yes, I am.

19 Q. Do you hold any other certifications?

20 A. I am a PRO, which is a peer-certified -- thing with
21 Proz.com, P-R-O-Z.com. PRO, that's the name of the
22 certification, a peer-certified organization.

23 Q. And a peer-certified organization for interpreters and
24 translators?

25 A. Yes.

N6D6GOE7

Shah - Direct

1 Q. You mentioned one of the languages for which you serve as
2 an interpreter and translator is Hindi, right?

3 A. Yes.

4 Q. When did you first learn Hindi?

5 A. Right from my first grade.

6 Q. Approximately how many years have you been fluent in Hindi?

7 A. I'd say 65, 64, 65 years.

8 Q. Have you prepared transcriptions of Hindi and translations
9 from Hindi to English that have been used in court before?

10 A. Yes, I have.

11 Q. And just so we understand each other, what do you
12 understand a transcription to mean?

13 A. Transcription is you get an audio tape, you translate, and
14 then you write that down in the source language as well as the
15 translated language, which is usually English. So from -- if
16 it's in Hindi, then you transcribe that into Hindi. And
17 alongside that, you provide translation into English.

18 Q. Ms. Shah, as part of your work, did you participate in the
19 process of providing transcription and translation services for
20 the government in this case?

21 A. Yes, I did.

22 Q. And were you contracted to provide those services through a
23 translation agency?

24 A. Yes.

25 Q. What's the name of that agency?

N6D6GOE7

Shah - Direct

1 A. ILS, International Language Services.

2 Q. Do you have an understanding as to whether the government
3 is paying ILS for your services in this case?

4 A. Yes.

5 Q. And what's that understanding?

6 A. That ILS is contracted through the government agency, and
7 they contracted me. That means the agency contracted me to
8 work on this project.

9 MR. ROTHSCHILD: May I approach the witness, your
10 Honor?

11 THE COURT: You may.

12 BY MR. ROTHSCHILD:

13 Q. Ms. Shah, I've handed you a disc that's marked for
14 identification as Government Exhibit 600. Do you recognize
15 that?

16 A. Yes.

17 Q. Does that disc contain the audio files that you used in
18 your work in this case?

19 A. Yes.

20 Q. How do you know that?

21 A. I have my initials there.

22 Q. Approximately how many times did you listen to the audio
23 files?

24 A. At least four times, four to five times.

25 Q. And what work product did you generate as a result of your

N6D6GOE7

Shah - Direct

1 work in this case?

2 A. I looked at the transcripts, edited them, reviewed them,
3 and wherever it was necessary, I filled in some blanks.

4 Q. And is that with respect to Hindi transcription; so in
5 other words, words that are written in Hindi language?

6 A. Hindi as well as the English translation.

7 Q. So your services covered the Hindi transcription, the
8 English language transcriptions, as well as translations from
9 Hindi into English; is that correct?

10 A. Correct.

11 Q. And there should be a binder on the stand, Ms. Shah. Do
12 you see that?

13 A. Yes.

14 Q. And it should have documents that have been marked for
15 identification as Government Exhibits 2-T through 4-T,
16 Government Exhibit 6-T through 13-T, and Government Exhibits
17 15-T through 18-T. Can you take a moment and just flip through
18 those documents and look up when you're done?

19 A. Yes.

20 Q. Do you recognize those, Ms. Shah?

21 A. Yes.

22 Q. What are they?

23 A. These are the transcripts from those -- from that audio.

24 Q. How do you know?

25 A. My initials are on them.

N6D6GOE7

Shah - Direct

1 Q. And are those transcripts fair and accurate transcriptions
2 and translations of the corresponding audio files?

3 A. Yes, they are.

4 Q. And is that with respect to both the Hindi and the English?

5 A. Yes.

6 Q. And with respect to the translations from Hindi into
7 English?

8 A. Yes.

9 Q. And just so we understand, the government exhibit marked
10 Government Exhibit 2-T, does that correspond to an audio marked
11 Government Exhibit 2?

12 A. 2, yes.

13 Q. Similarly, 3-T corresponds to Government Exhibit 3?

14 A. Correct.

15 Q. And so on and so forth?

16 A. Right.

17 MR. ROTHSCHILD: One moment, your Honor.

18 THE COURT: All right.

19 MR. ROTHSCHILD: Your Honor, subject to future
20 connection and relevance, the government would offer Government
21 Exhibit 4-T, Government Exhibit 6-T through 13-T and Government
22 Exhibit 15-T through 18-T.

23 THE COURT: Any objection?

24 MS. PRASAD: We don't object, but we do object, your
25 Honor, to the portions that have been designated as snippets.

N6D6GOE7

Shah - Cross

1 THE COURT: Okay. Well, the portions that have been
2 designated and marked as exhibits are received into evidence.

3 (Government's Exhibit 4-T, 6-T through 13-T, and 15-T
4 through 18-T received in evidence)

5 MR. ROTHSCHILD: Thank you.

6 BY MR. ROTHSCHILD:

7 Q. One final question. You said you reviewed some transcripts
8 and filled in some gaps. Did some other individuals besides
9 you work on the translations in this case?

10 A. Yes, they did.

11 Q. Did you provide final sign-off on the transcripts and
12 translations in this case?

13 A. Yes.

14 Q. Your testimony is that they are fair and accurate
15 transcriptions and translations of the corresponding audio
16 files?

17 A. Yes.

18 MR. ROTHSCHILD: No further questions, your Honor.

19 THE COURT: All right. Cross-examination, whenever
20 you're ready.

21 CROSS-EXAMINATION

22 BY MS. PRASAD:

23 Q. Good afternoon, Ms. Shah.

24 A. Good afternoon.

25 Q. Anjula Prasad on behalf of Brijesh Goel.

N6D6GOE7

Shah - Cross

1 Can we pull up Government Exhibit 15-T. Go to Page 2,
2 please.

3 So, Ms. Shah, you see the text in Box 2 there? You
4 see the bottom line there, before it says "I have gotten a
5 subpoena. I...delete"?

6 A. Yes.

7 Q. Ms. Shah, what does dot, dot, dot mean?

8 A. It means there's a pause.

9 Q. Were there words between "I" and "delete"?

10 A. No.

11 Q. No words?

12 A. There's just dot, dot, dot.

13 Q. Does do the dot, dot, dot mean there were possibly words
14 between "I" and "delete"?

15 A. Not from looking at the Hindi part, no.

16 Q. So are you saying, Ms. Shah, that that sentence is I --
17 delete?

18 A. Exact -- no. That is the reason why the dots are there in
19 the English part, to show -- to make it clearer.

20 Q. I'm sorry. I'm not clear. Ms. Shah, to make what clear?
21 That there's a pause there?

22 A. If you said that without the dots in the English part, like
23 I delete, that would make no sense.

24 Q. Correct. So I'm not clear here, Ms. Shah. Are you saying
25 that "I delete" is not a sentence?

N6D6GOE7

Shah - Cross

1 A. I'm merely trying to explain that if we did not put in
2 those three dots and you just said "I delete" in English, that
3 would not make any sense.

4 Q. So you're saying, Ms. Shah, that there's something in
5 between "I" and "delete," because "I delete" makes no sense; is
6 that right?

7 A. I'm not saying that there should be something, because the
8 way it's said in Hindi is different. It does not mean that the
9 person is saying "I delete," which is the reason why those dots
10 are there.

11 Q. So the dots mean a pause?

12 A. It's just to make people understand the difference between
13 "I delete" and that -- because it doesn't make sense to say "I
14 delete" because he's not deleting, at least that's not what
15 he's saying.

16 Q. So is it possible that could say "I should delete" or "I
17 should not delete"?

18 A. No. I'm not going to put anything of that sort because
19 that's not what is said in the Hindi portion.

20 Q. Okay. So you don't actually know if that says "I should
21 delete" in English or "I should not delete"; that's not clear
22 from this?

23 MR. ROTHSCHILD: Objection.

24 THE COURT: Overruled. Go ahead.

25 A. Precisely for that reason. There is no "I should" or

N6D6GOE7

Shah - Cross

1 "would" or anything in there, the English portion.

2 Q. Okay. So it's your testimony that this sentence says I
3 dot, dot, dot delete; is that right?

4 A. Yes.

5 Q. But it could say "I should" or "I should not delete"?

6 A. I would not speculate on that, ma'am.

7 MR. ROTHSCHILD: Objection.

8 THE COURT: You have the answer.

9 BY MS. PRASAD:

10 Q. Ms. Shah, when were you first hired to work on this
11 translation of the recordings?

12 A. I was hired to review back in June of last year, 2022.

13 Q. And you were hired as a Hindi expert?

14 A. I was asked to review that, yes.

15 Q. Were you reviewing the recording?

16 A. Yes, as well as the transcript because the transcripts were
17 given to me.

18 Q. Do you know who had made that transcript?

19 A. No.

20 Q. So you simply reviewed the transcript. Did you listen to a
21 recording as well?

22 A. Yes.

23 Q. Okay. Were you given two recordings at that time,
24 Ms. Shah?

25 A. I do not recollect.

N6D6GOE7

Shah - Cross

1 Q. Okay. So Ms. Shah, as a Hindi expert, did you take the
2 transcript and then edit the Hindi portions into English?

3 A. No. I listened to the audio and read the English portion,
4 the translated portion, and made changes if and when necessary.
5 And if I found that there was something in the English portion
6 that I did not hear, I deleted that, or corrected it as
7 required.

8 Q. In the English portion?

9 A. And in the Hindi portion, if -- as and when required.

10 Q. So as a Hindi expert, do you usually translate English or
11 transcribe English recordings, Ms. Shah?

12 A. Well, there have been times when I've just been asked to
13 transcribe the Hindi recordings into the Hindi language, Hindi
14 script, and there have been times when I also had to translate.
15 So it depends.

16 Q. So what did you do here?

17 A. In this case, I pretty much looked at the transcripts that
18 were given to me, and I check them for accuracy, both for Hindi
19 as well as English.

20 Q. So were you hired again in 2023?

21 A. Yes.

22 Q. In connection with these recordings?

23 A. Yes.

24 Q. And did you again listen to the recordings?

25 A. I did.

N6D6GOE7

Shah - Cross

1 Q. Were you given the transcript that you had created last
2 year?

3 A. I do not know if that was the original transcript that I
4 was given, but I was given the transcript as well as the audio
5 recordings.

6 Q. So you don't recall if it was the same transcript that you
7 had created last year that you were editing this year?

8 A. I don't recall.

9 Q. So, Ms. Shah, you said that you recognize these exhibits
10 that we just -- these snippets, these transcripts, because it
11 has your initials on it?

12 A. Yes.

13 Q. Can we go to the first page?

14 So your initial there means that you worked on this
15 transcript; is that correct?

16 A. By worked, I mean I reviewed or edit it. I did not do the
17 full transcript.

18 Q. I see another initial there. Do you see that?

19 A. Yes.

20 Q. Next to yours. Do you know what that says?

21 A. I don't know whose that is.

22 Q. Let's blow it up.

23 Does that say "AN"?

24 A. I don't know.

25 Q. Do you think someone reviewed this transcript as well?

N6D6GOE7

Shah - Cross

1 A. I have no idea. I will not speculate.

2 Q. But you put your initials there --

3 A. Yes, on the left side of my initials. That's all I can
4 talk about.

5 Q. But you initialed this after you reviewed the transcript?

6 A. Right.

7 Q. So it's quite possible that "AN" reviewed the transcript as
8 well?

9 A. I don't know.

10 Q. Ms. Shah, I would like to direct you to Government Exhibit
11 11-T in evidence.

12 Can we turn to Page 3, please?

13 Ms. Shah, I'd like to direct you to Box 8.

14 A. Which one?

15 Q. Box 8.

16 A. Box 8. Okay.

17 Q. So you see the text there?

18 A. Yes.

19 Q. "But then, should I delete any messages."

20 And there's an U/I after that. Can you tell me what
21 the U/I is?

22 A. Unintelligible.

23 Q. Does that mean you can't hear anything?

24 A. Yes. Or it's all garbled. Yes, that's pretty much that.

25 Q. Do you know for about how long that U/I, that

N6D6GOE7

Shah - Cross

1 unintelligible portion is?

2 A. No.

3 Q. And then looking right below that at Box 9, the text there
4 says "yeah." Do you see that?

5 A. Yes.

6 Q. And with Goel there as a speaker, so that means that
7 Brijesh Goel said "yeah"?

8 A. Yeah.

9 Q. Okay. So the way that this is written, Ms. Shah, am I
10 correct that the "yeah" follows the unintelligible portion?

11 A. Correct.

12 Q. So, in fact, the "yeah" does not follow, "but then should I
13 delete any messages"; does it?

14 A. He says that, and then the portion that it says U/I is
15 something that we could not hear or understand, and then the
16 next person's answer "yeah."

17 Q. In fact, Ms. Shah, you don't actually know if Brijesh is
18 saying "yeah," to the sentence above with "should I delete the
19 message." You don't know that, do you, "should I delete any
20 messages?"

21 A. I would not necessarily say that he said "yeah" to the
22 portion that we could hear because there's a U/I there.

23 Q. So, in fact, we don't really know what he's saying "yeah"
24 to; do we?

25 A. Yes.

N6D6GOE7

Shah - Redirect

1 MS. PRASAD: Okay. Thank you, Ms. Shah. That's all
2 we have.

3 THE COURT: Redirect?

4 MR. ROTHSCHILD: Very briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. ROTHSCHILD:

7 Q. Ms. Shah, do you remember being asked a few questions on
8 cross-examination just now about the word "delete" in several
9 messages?

10 A. Yes.

11 Q. Were those the only instances of the word "delete," as far
12 as you can recall, or were there other instances of the word
13 "delete" in these recordings that you listened to?

14 A. There could have been some.

15 Q. Could we pull up what's in evidence as Government
16 Exhibit 11-T and go to Page 7?

17 And, Ms. Shah, could you read what's in Row 37?

18 A. Fuck, this we need to delete. [U/I] any trade?

19 Q. And, Ms. Shah, just to clear up any confusion, you
20 mentioned that you did some work in this case in June of 2022;
21 is that right?

22 A. Correct.

23 Q. And you were provided some draft transcripts to review and
24 edit in certain ways back then; is that right?

25 A. Yes.

N6D6GOE7

1 Q. And then you said you reengaged in 2023 at some point; is
2 that right?

3 A. Yes.

4 Q. And you were provided, again, some draft transcripts and
5 your task was to review them for accuracy; is that right?

6 A. Yes.

7 Q. And you can't recall whether the drafts that you got in
8 2023 were the same drafts that you had seen last in June of
9 2022, right?

10 A. Right.

11 Q. But today, your testimony is the transcripts that are
12 sitting there in front of you are fair and accurate
13 transcriptions and translations of the corresponding audio
14 files; is that right?

15 A. Yes.

16 MR. ROTHSCHILD: One moment, your Honor.

17 Nothing further, your Honor.

18 THE COURT: All right. Thank you very much. You may
19 step down.

20 (Witness excused)

21 THE COURT: Please call -- well, it's two minutes to.
22 I usually make the parties call the next witness, but maybe I'm
23 in a very good mood. I'll suspend that, and we'll find our
24 next witness tomorrow morning.

25 Ladies and gentlemen, I feel like I've known you

N6D6GOE7

1 forever, and you are probably feeling like you've been sitting
2 in this courtroom forever. But go home, I know you have a lot
3 of things - laundry, family, e-mails, texts, birthday cards,
4 whatever may be - to tend to. I hope you have a very pleasant
5 evening.

6 And let's do what we did this morning, which is get a
7 good start at 10:00 o'clock. And, again, do not discuss the
8 case among yourselves or with anyone and keep an open mind.
9 There's more to come.

10 Thank you.

11 Oh, ladies and gentlemen, you don't have to be seated
12 in the box. This will take one second, but everyone come out
13 for one second. Please come out for one second.

14 I just wanted to instruct you that you need to leave
15 your notebooks in the jury room and do not take them home with
16 you.

17 Thank you. That's all. Have a pleasant even.

N6D6GOE7

1 (Jury not present)

2 THE COURT: When do you expect to put Mr. Nirajan on?

3 MR. ROTHSCHILD: Tomorrow, your Honor.

4 THE COURT: Well, I have your request under
5 advisement. In principle, does the government have any
6 objection? The request was that the defense receive a
7 document, which potentially could be used, extracted or
8 redacted from the actual records.

9 MR. ROTHSCHILD: I think we do, your Honor. I think
10 the purpose -- my understanding the purpose of the exercise
11 that the Court undertook *in camera* was to review the documents
12 and to convey to the defense any information that could be
13 helpful. I think the Court has done that. And the fact that
14 the defense would prefer to have particular documents at hand
15 to cross-examine our witness as opposed to others, I don't
16 think that calls for the production of this document.

17 THE COURT: Well, I will take that under advisement.
18 I understand the positions of both sides.

19 MR. THOMAS: Judge, perhaps tomorrow morning we could
20 begin a few minutes early. We expect there may be a dispute
21 about some issues related to the cross of Mr. Nirajan. We
22 hope to work them out tonight, but I'm a realist.

23 THE COURT: I'll be here. So we can go on the record
24 at 9:30, if necessary. Let's see what happens. Let's be
25 optimistic and hopeful that peace will reign.

N6D6GOE7

1 MR. THOMAS: Yes, Judge. Thank you.

2 (Adjourned to June 14, 2023, at 9:30 a.m.)

3 * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 INDEX OF EXAMINATION

2	Examination of:	Page
3	WENDY GORMAN	
4	Direct By Mr. Naftalis	80
5	Cross By Mr. Ford	137
6	Redirect By Mr. Naftalis	146.
7	ANDREW TAPPETO	
8	Direct By Mr. Rothschild	148
9	Cross By Mr. Brodsky	169
10	Redirect By Mr. Rothschild	198
11	THOMAS CAROCCI	
12	Direct By Mr. Thomas	205
13	Cross By Mr. Ford	248
14	NITA SHAH	
15	Direct By Mr. Rothschild	254
16	Cross By Ms. Prasad	261
17	Redirect By Mr. Rothschild	269

18 GOVERNMENT EXHIBITS

19	Exhibit No.	Received
20	500, 100 through 141, 143	97
21	334	108
22	332	114
23	331	125
24	333	129
25	381	151

1	255	163
2	383	165
3	361	207
4	362	210
5	363	213
6	300 through 303	220
7	364, 366, and 368	222
8	365	224
9	367 and 369	227
10	415	234
11	4-T, 6-T through 13-T, and 15-T through 18-T	261

12 DEFENDANT EXHIBITS

13	Exhibit No.	Received
14	1260	142
15	1269	144
16	1247	174
17	1248	182
18	1246	186
19	1249	192

20
21
22
23
24
25